



भारत का राजपत्र

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मं. 2] नई दिल्ली, जनवरी 4—जनवरी 10, 2009, शनिवार/पौष 14—पौष 20, 1930
No. 2] NEW DELHI, JANUARY 4—JANUARY 10, 2009, SATURDAY/PAUSA 14—PAUSA 20, 1930

इस भाग में अलग पृष्ठ संख्या दी जाती है जिससे कि यह पृथक् संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए भाविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्यालय मुख्य आयकर आयुक्त

जयपुर, 19 दिसम्बर, 2008

सं. 13/2008-09

का.आ. 48.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43 वा) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतदद्वारा निर्धारण वर्ष 2008-09 एवम् आगे के लिए कथित धारा के उद्देश्य से “इण्डियन कॉर्सिल फॉर इन्टरनेशनल एमिटी, जयपुर” को स्वीकृति देते हैं।

बश्यते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखण्ड (23 सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक: अआआआआआ(मु) / जय/10(23सी)(vi)/08-09/3221]

बी.एस. डिल्लो, मुख्य आयकर आयुक्त

OFFICE OF THE CHIEF COMMISSIONER OF
INCOME TAX

Jaipur, the 19th December, 2008

No. 13/2008-09

S.O. 48.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules, 1962 the Chief Commissioner of Income-tax, Jaipur hereby approves “Indian council for International Amity, Jaipur” for the purpose of said section for the A.Y. 2008-09 & onwards.

Provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/Addl.CIT(Hqrs.)/10(23C)(vi)/2008-09/3221]

B.S. DHILLON, Chief Commissioner of Income-tax

शुद्धि-पत्र

जयपुर, 23 दिसम्बर, 2008

का.आ. 49.—आयकर अधिनियम, 1961 की धारा 10 के खण्ड (23 सी) के उपखण्ड (vi) के तहत अधिसूचना सं 03/2007-08 दिनांक 11-10-07 के द्वारा “श्री आर्य विद्यापीठ सोसायटी, भुसावर, भरतपुर” को स्वीकृति दी गई थी। अधिसूचना के पैरा 1 की लाइन 3 एवं 4 में निर्धारण वर्ष 2004-05 एवं 2005-06 के स्थान पर “निर्धारण वर्ष 2004-05 एवं आगे के लिए” पढ़ा जाये।

[क्रमांक: मुआआ/अआआ/(मु)/जय/10(23सी)(vi)/08-09/3320]

बी.एस. छिल्लो, मुख्य आयकर आयुक्त

CORRIGENDUM

Jaipur, the 23rd December, 2008

S.O. 49.—In Notification No. 03/2007-08 dated 11-10-2007 vide which “Shree Arya Vidyapeeth Society, Bhusawar, Bharatpur” was approved for the purpose of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules, 1962, the assessment years in para 1, line 5 may be read as ‘A.Y. 2004-05 and onwards’ instead of A.Y. 2004-05 and 2005-06.

[No. CCIT/JPR/Addl.CIT(Hqrs.)/10(23C)(vi)/2008-09/3320]

B.S. DHILLON, Chief Commissioner of Income-tax

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 31 दिसम्बर, 2008

का.आ. 50.—राष्ट्रीयकृत बैंक (प्रबन्ध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खण्ड 9(2) के उप खण्ड (ख) के साथ पठित, बैंककारी कम्पनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3(छ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक के परामर्श से, एतद्वारा, श्री ए.के.सुराणा को, इस अधिसूचना की तारीख से तीन वर्षों की अवधि के लिए और/अथवा अगले आदेश होने तक, जो भी पहले हो, पंजाब एंड सिध बैंक के निदेशक बोर्ड में चार्टर्ड एकाउन्टेंट की श्रेणी के तहत, अंशकालिक गैर-सरकारी निदेशक के पद पर नियुक्त करती है।

[फा.सं. 9/30/2004-वीओ-1]

जी.वी. मिह, उप सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 31st December, 2008

S.O. 50.—In exercise of the powers conferred by sub-section 3(g) of Section 9 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 read with sub-clause (b) of clause 9(2) of the Nationalised Banks (Management & Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with Reserve Bank of India, hereby nominates Shri A.K. Surana, as part-time non-official director under Chartered Accountant category, on the Board of Directors of Punjab

and Sind Bank for a period of three years from the date of notification and/or until further orders, whichever is earlier.

[F. No. 9/30/2004-BO-I]

G. B. SINGH, Dy. Secy.

(बीमा प्रभाग)

नई दिल्ली, 2 जनवरी, 2009

का.आ. 51.—जीवन बीमा अधिनियम, 1956 (1956 का 31) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, अधिसूचना की तारीख से तीन वर्षों के लिए अथवा उनका उत्तराधिकारी नियुक्त होने तक, जो भी पहले हो, भारतीय जीवन बीमा नियम के निदेशक मण्डल में गैर सरकारी सदस्य के रूप में नियमित व्यक्तियों को नामित करती है :

1. डॉ. सूरानद राजशेखरन
2. श्री मोनिस आर. किदवई

[फा. सं. ए-15011/1/2007-बीमा-III]

तरुण बजाज, संयुक्त सचिव

(Insurance Division)

New Delhi, the 2nd, January, 2009

S.O. 51.—In exercise of the powers conferred by Section 4 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby appoints of following persons as Non-Official Member on the Board of the Life Insurance Corporation of India for a period of three years from the date of Notification or until their successors are nominated, whichever is earlier.

1. Dr. Sooranad Rajashekhan
2. Sh. Monis R. Kidwai

[F. No. A-15011/1/2007-Ins. III]

TARUN BAJAJ, Jt. Secy.

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

नई दिल्ली, 29 दिसम्बर, 2008

का.आ. 52.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में मानव संसाधन विकास मंत्रालय उच्चतर शिक्षा विभाग (के अन्तर्गत भारतीय प्रांद्यांगिकी संस्थान रुड़की को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं. 11011-7/2005-रा.भा.ए.]

अनिता भट्टाचार्य जैन, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

New Delhi, the 29th December, 2008

S.O. 52.—In pursuance of sub rule (4) of rule 10 of the Official Language (Use for Official Purposes of the

Union) Rules, 1976, the Central Government hereby notifies the Indian Institute of Technology Roorkee under the Ministry of Human Resource Development, (Dept. of Higher Education) whose more than 80% members of the staff have acquired working knowledge of Hindi.

[No. 11011-7/2005-O.L.U]

ANITA BHATNAGAR JAIN, J. Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

[आयुर्वेद, योग व प्राकृतिक चिकित्सा, सिद्ध, यूनानी एवं होम्योपैथी
(आयुष) विभाग]

नई दिल्ली, 15 दिसम्बर, 2008

का.आ. 53.—केन्द्रीय सरकार, राजभाषा "संघ के शासकीय प्रयोजनों के लिए प्रयोग" नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में स्वास्थ्य और परिवार कल्याण मंत्रालय के आयुर्वेद, योग व प्राकृतिक चिकित्सा, सिद्ध, यूनानी एवं होम्योपैथी (आयुष) विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित संस्थान जिसके 80 प्रतिशत कर्मचारियों ने हिन्दी में कार्यसाधक ज्ञान प्राप्त कर दिया है—

1. केन्द्रीय यूनानी चिकित्सा अनुसंधान संस्थान (सीसीआरयूएम)
नई दिल्ली

[स. ई-11018(2)/2003-भा.चि.य.(रा.भा.)]

बी.आनंद, संयुक्त सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE
[Department of Ayurved, Yoga and Naturopathy, Unani,
Sidha Homeopathy (AYUSH)]

New Delhi, the 15th December, 2008

S.O. 53.—In pursuance of sub rule (4) of rule 10 of the Official Language "Use for official purpose of the Union" Rule, 1976 the Central Government hereby notifies the following office under the administrative control of Department of AYUSH, Ministry of Health & Family Welfare whereof 80% staff have acquired the working knowledge of Hindi :—

1. Central Council for Research in Unani Medicine (CCRUM) New Delhi.

[No. E- 11018(2)/2003-I.S.M.(O.L.)]

B.ANAND, Jt. Secy.

पर्यटन मंत्रालय

नई दिल्ली, 2 जनवरी, 2009

का.आ. 54.—जन परिसर (मैर कानूनी निवासी एविक्शन) अधिनियम 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों और दिनांक 27 नवम्बर, 2004 को भारत के राजपत्र में प्रकाशित, दिनांक 5 नवम्बर, 2004 को पर्यटन मंत्रालय, भारत सरकार के एम.ओ. सं. 3027 की अधिसूचना के अधिकमण में उनको छोड़कर इस अधिकमण के पूर्व इस संबंध में कुछ चीजें ली गई अथवा हटा दी गई, केन्द्र सरकार निम्नलिखित सारणी के कॉलम (1) में उल्लिखित अधिकारी को इस अधिनियम के उद्देश्यों के लिए इस्टेट अधिकारी बनाते हुए, सरकार के राजपत्रित अधिकारी के समकक्ष अधिकारी

नियुक्त करती है और स्थानीय सीमाएं भी तय करती है जिसके अंतर्गत तथा कथित सारणी के कॉलम (2) के अनुरूप की गई प्रतिष्ठियों के जन परिसर की श्रेणियों के अंतर्गत, उनके संदर्भ में इस्टेट अधिकारी, कथित अधिनियम के द्वारा अथवा अधीन ऐसे इस्टेट अधिकारी को प्रदत्त शक्तियों का प्रयोग करेगा और दिए गए कर्तव्यों का निर्वाह करेगा।

सारणी

अधिकारी का पदनाम	जन परिसर की श्रेणियां और क्षेत्राधिकार की स्थानीय सीमाएं
(1)	(2)
महाप्रबंधक, होटल पाटलीपुत्र अशोक, और चन्द्र पटेल पथ, पट्टे पर ली गई अथवा उसके स्वयं पटना-800001	भारत पर्यटन विकास निगम द्वारा पट्टे पर ली गई अथवा उसके स्वयं के परिसर और जो पश्चिम बंगाल, बिहार, उडीसा तथा असम के राज्य में स्थित हैं।

[सं. 6/21/91-पीएसयू (टी)]

बी.बी. रॉय, अवर सचिव

MINISTRY OF TOURISM

New Delhi, the 2nd January, 2009

S.O. 54.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of unauthorized occupants) Act 1971 (40 of 1971) and in supersession of the notification of the Government of India in the Ministry of Tourism, number S.O. 3027, dated the 5th November, 2004, published in the Gazette of India dated the 27th November, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the officer mentioned in column (1) of the table below, being the officer equivalent to the rank of gazetted officer of the Government, to be the Estate Officer for the purposes of this Act and also defines the local limits within which and the categories of the public premises, as specified in the corresponding entry in column (2) of the said table, in respect of which the said Estate Officer shall exercise the powers conferred, and perform the duties imposed, on such Estate Officer by or under the said Act.

TABLE

Designation of the officer	Categories of public premises and local limits of the jurisdiction
(1)	(2)
General Manager, Hotel Patliputra Ashok, Beer Chand Patel path, Patna- 800001	All premises belonging to, or taken on lease, by the India Tourism Development Corporation Limited and situated in the States of West Bengal, Bihar, Orissa and Assam

[No. 6/21/91-PSU(T)]

B. B. ROY, Under Secy.

उपभोक्ता पापले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता पापले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 19 दिसम्बर, 2008

का.आ. 55.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये हैं :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 4989: 2006	संशोधन संख्या 1, नवम्बर, 2008	10 दिसम्बर, 2008

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो मानक भवन, 9, बहादुर शाह जफर मार्ग नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चंडीगढ़, चंनई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूर्ण तथा तिरुवनन्तपुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ: सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियर)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 19th December, 2008

S.O. 55.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. and Year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 4989: 2006	Amendment No. 1, November, 2008	10 December, 2008

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref.: CED/Gazette]

A.K. SAINI, Sc 'F' & Head (Civil Engg.)

नई दिल्ली, 19 दिसम्बर, 2008

का.आ. 56.—भारतीय मानक ब्यूरो नियम, 1987 के नियम, 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि	
(1)	(2)	(3)	(4)
1.	आई एस 8603: 2008 भारी प्रदूषित वातावरण के लिए पोर्सिलेन ट्रांसफर्मर बुशिंगों के आयाम 12वीं/केवी.24केवी और 36 केवी पहला पुनरीक्षण	-	30 सितम्बर, 2008

इस भारतीय मानक की प्रतियां भारतीय मानक व्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूर्णे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : ईटी06/टी-48]

प्रकाश बचानी, वैज्ञानिक इ एवं प्रमुख (विद्युत तकनीकी वि.)

New Delhi, the 19th December, 2008

S.O. 56.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued :—

SCHEDULE

Sl. No.	No. and Year of the Indian Standards	No. and Year of the Indian Standards, if any Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1	IS 8603: 2008 Dimensions for Porcelain Transformer Bushings for use in heavily Polluted atmospheres 12/17.5 kV, 24kV and 36kV (First Revision)	—	30 September, 2008

Copy of these Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref.: ET 06/T-48]

PRAKASH BACHANI, Sc. E & Head (Electrotechnical Department)

नई दिल्ली, 26 दिसम्बर, 2008

का.आ. 57.—भारतीय मानक व्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (को) में संशोधन किया गया/किये गये हैं :—

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 4308 : 2003	संशोधन संख्या 4, नवम्बर 2008	16 दिसम्बर 2008
2.	आई एस 8423 : 1994	संशोधन संख्या 3, नवम्बर 2008	17 दिसम्बर 2008
3.	आई एस 13386 : 1992	संशोधन संख्या 9, नवम्बर 2008	19 दिसम्बर 2008
4.	आई एस 13849 : 1993	संशोधन संख्या 9, नवम्बर 2008	17 दिसम्बर 2008
5.	आई एस 14609 : 1999	संशोधन संख्या 5 नवम्बर 2008	19 दिसम्बर 2008

इन संशोधनों की प्रतियां भारतीय मानक व्यूरो भारतीय मानक भवन, 9, बहादुर शाह जफर मार्ग नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूर्णे तथा तिरुवनन्तपुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ: सीईडी/राजपत्र]

ए. के. सैनी, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियर)

New Delhi, the 26th December, 2008

S.O. 57.—In pursuance of clause (b) of sub-rule (1) of Rules (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :—

SCHEDULE

Sl. No	No. and year of the India Standards	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 4308: 2003	Amendment No. 4, November 2008	19 December 2008
2.	IS 8423: 1994	Amendment No. 3, November 2008	17 December 2008
3.	IS 13386: 1992	Amendment No. 9, November 2008	19 December 2008
4.	IS 13849: 1993	Amendment No. 9, November 2008	17 December 2008
5.	IS 14609: 1999	Amendment No. 5, November 2008	19 December 2008

Copy of these amendments are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref.: CED/Gazette]

A. K. SAINI, Sc 'F' & Head (Civil Engg.)

शहरी विकास मंत्रालय

नई दिल्ली, 6 जनवरी, 2009

का.आ. 58.—यह एतद्वारा अधिसूचित किया जाता है कि राजघाट समाधि समिति अधिनियम, 1951 (1951 का 41वां) की धारा 4 की उपधारा (i) के खंड (घ) के अनुसार कुमारो निर्मला देशपांड, के स्थान पर डा. (श्रीमती) कपिला वात्स्यायन, सदस्या, राज्य सभा, को राजघाट समाधि समिति के सदस्य के रूप में निर्वाचित किया गया है :

[सं. 25011/7/85-इल्यू-2]

एस. एन. दुबे, अवर सचिव

MINISTRY OF URBAN DEVELOPMENT

New Delhi, the 6th January, 2009

S.O. 58.—It is hereby notified that Dr. (Smt.) Kapila Vatsyayan Member of the Rajya Sabha has been elected as Member of the Rajghat Samadhi Committee in accordance with the Clause (d) of sub-section (1) of Section 4 of the Rajghat Samadhi Committee Act, 1951 (41 of 1951) in place of Kumari Nirmala Deshpande.

[No. 25011/7/85-W2]

S. N. DUBEY, Under Secy.

श्रम एवं रोजगार मंत्रालय
नई दिल्ली, 15 दिसंबर, 2008

का.आ. 59.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं भारतीय खाद्य निगम के प्रबंधालय के सबद्वय नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 19/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-05-2008 को प्राप्त हुआ था :

[सं. एल-22012/50/2003-आई आर(सीएम-II)]
अजय कुमार गौड़, डैम्स अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 15th December, 2008

S.O. 59.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in Industrial Dispute between the employers in relation to the management of Food Corporation of India, and their workmen, received by the Central Government on 15-12-2008

[No. L-22012/50/2003-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,

LUCKNOW

PRESENT

Sh. N.K. PUROHIT, Presiding Officer

I.D. No. 19/2004

Ref. No. L-22012/50/2003-IR(CM-II) dated : 03-02-2004

BETWEEN

The State Secretary,
Bhartiya Khadya Nigam Karmchari Sangh,
98, Neshvila Road, Dehradun
Dehradun-248001.

(Espousing case of Shri V.S. Rana)

AND

The Sr. Regional Manager,
Food Corporation of India,
98, Neshvila Road, Dehradun,
Dehradun-248001.

The Zonal Manager,
Food Corporation of India,
Ansul Bhawan, Kasturba Gandhi Marg,
New Delhi-110001.

AWARD

4-12-2008

By order No. L-22012/50/2003-IR(CM-II) dated: 03-02-2004 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred following industrial dispute between the State Secretary, Bhartiya Khadya Nigam Karmchari Sangh, 98, Neshvila Road, Dehradun (Espousing case of Shri V.S. Rana) and the Sr. Regional Manager & Zonal Manager, Food Corporation of India, 98, Neshvila Road, Dehradun for adjudication:

The reference under adjudication is as under:

"Whether the action of the Management of Food Corporation of India in transferring Sh. V.S. Rana, AG-III, Union State Secretary from Dehradun to Jammu & Kashmir w.e.f. 11-4-2002 is legal and justified? If not, to what relief the workman is entitled to?"

2. The admitted case of the parties is that the workman was transferred from Uttranchal region to Jammu & Kashmir region by the opposite parties vide order dated 11-04-2002, but the workman did not join his duties in Jammu & Kashmir region resulting into non payment of salary and other allowances w.e.f. 11-04-2002 to 21-3-2003.

3. The workman's union in its statement of claim has stated that the workman was served upon two charge-sheets in which though the alleged charges were not found proved by the Inquiry Officer even then he was penalised by the management of FCI. Later he was served upon third charge-sheet vide memo dated 24/27-6-2002, under minor charges, and was illegally penalised vide order dated 31-5-2003. The workman has further submitted that the management of FCI made his several transfers with mala fide intentions, in order to harass and victimize him, in a very short span of time, which were violative of transfer policy circular dated 21-11-2002 for transfer policy guidelines for employees of FCI. A brief synopsis of transfers made in respect of the workman is as under :

- (i) The workman was transferred vide order dated 18-8-98 from Dehradun to Rajasthan Region. The workman did not join in response of said transfer order, which was later rectified to the extent that his transfer was made to Delhi instead of Rajasthan Region and the workman joined Delhi Region.
- (ii) The workman was transferred from Delhi Region to Rajasthan Region vide order dated 20-9-2000. The workman did not join his duties in Rajasthan Region and protested at which the management cancelled above orders and he was posted in his office at Delhi Region.

- (iii) The workman was transferred from Delhi Region to Dehradun vide order dated 13-6-2001 and he joined duties there on 16-6-2001.
- (iv) The workman was transferred from Dehradun to Srinagar Garwal vide order dated 18-6-2001 and he joined duties there on 20-6-2001.
- (v) The workman was transferred from Srinagar Garwal to Rajasthan Region vide order dated 4-9-2001. At the protest of workman his said transfer order was kept in abeyance, by the management, till further orders.
- (vi) The management of FCI vide order dated 11-04-2002 transferred the workman from Uttranchal to J&K Region and he joined his duties there on 26-2-2003.
- (vii) Later the workman was transferred from J&K Region to Uttranchal by order dated 12-3-2003.

4. The workman has stated that being State Secretary of Uttranchal Redgion vide notification dated 04-07-2001 of a recognized union, he is a protected workman and ought not to be transferred from Dehradun. Also, the fact that his wife was working in Government School, as such he ought to have been kept in Dehradun in view of the transfer policy. Thus, the workman has prayed that the transfer order dated 11-04-2002, transferring the workman from Dehradun to J&K Region be declared illegal and against the transfer policy of the FCI and also he be paid wages for the period 01-04-2002 to 21-03-2003.

5. The management of FCI has filed its statement of claim denying the allegation of harassment and victimization against workman. It has stated that the various transfer orders of the workman were made on different reasons which given as under:

- (i) The transfer order dated 18-8-98 to Rajasthan was made due to gross-misconduct of the workman with H.Qrs. investigation team; and later on it was rectified on administrative ground and the workman was transferred to Delhi.
- (ii) The transfer order dated 13-12-2000, transferring the workman to Delhi in succession to order dated 20-9-2000, was made on the workman's request.
- (iii) Again the transfer order dated 13-06-2001, was issued at the request of the workman.
- (iv) The transfer order dated 04-09-2001, transferring the workman from Srinagar to Rajasthan Region was issued due to reason that the workman was causing hindrance in workplace, but the same was kept in abeyance at the request of the workman himself.
- (v) The transfer order dated 11-04-2002, transferring the workman from Uttranchal to J&K Region was made due to mischievous activities of the workman.

6. The management of FCI has submitted that it made the transfers of the workman on administrative grounds, in exercise of its powers conferred under Regulation 17 of FCI (Staff) Regulation, 1971 to cope with the matter of the workman who is a regular problem creator and is in habit of distrubing the work culture at the stations wherever he is posted; and to ensure a good healthy atmosphere at place of work and nothing is unjust or illegal as the same was done to check the nuisance creating activities & mis-use of union power by the workman. The management of FCI has thus requested to reject the claim of the workman with the plea that he is also not entitled for wages for period 01-04-2002 to 21-03-2003. Since he was relieved on 25-02-2003 after the transfer orders but he failed to join the new place of posting till 21-03-2002, thus in between period he may not be paid salary etc. treating as not on duty.

7. In the rejoinder, apart from reiterating its averments made in the statement of claim, the workman has stated that the transfer cannot be made as a measure of punishment as stated by the management.

8. The parties have filed documentary evidence in support of their case, which includes relevant office orders and circulars/memorandums and correspondences. The worker examined himself in support of his averments whereas the management stated that it has no evidence to adduce, therefore, date was fixed for arguments. The management filed its written argument whereas the workman did not file any written argument.

9. Heard argument of the learned representatives of both the sides and perused evidence on record.

10. The learned representative of the workman has contended that the workman was Secretary of the Union and as such protected workman, therefore, as per transfer guidelines he was not to be transferred during his tenure as Secretary of the Union. It is further contended that the workman has been subjected to harassment and victimizaton due to his involvement in union activities, which is evident from his frequent transfers within period of 2 years. His transfer from Dehradun to J&K, Regional Office vide impugned order was malafide and illegal and the workman is entitled for the wages of the period 1-4-02 to 21-3-2003. In support of his contention he has relied on 2004 Lab IC 4061 Kendriya Vidyalaya Sangathan vs Damaodar and others.

11. The learned representative of the management has urged that workman was involved in unlawful activities and created unpleasant environment all over the work-place. The workman was penalized alongwith other participants who gheroed the SRM/DM, Haldwani. He was transferred to Rajasthan regional office due to his gross misconduct but subsequently transfer was made on administrative ground to Delhi. It is further urged that the workman was transferred to Delhi regional office on his own request vide

order dt. 13-12-2000 and again on his own request he was transferred from Delhi to Dehradun. It is also contended that the workman tried to disturb the consultative committee meeting on 4-9-2001 and showed inhuman behavior. Subsequent to his personal request, the order was put in abeyance. There was no act of harassment by the opposite party. It is further contended that transferring the workman from Dehradun to J&K regional office vide impugned order is legal and justified. Since the workman joined on 26-2-2003 inspite of fact that he was relieved from J&K way back on 16-4-02, in between period was treated leave without pay. The workman never challenged the penalty order passed in the inquiry against him therefore, alleged incident of manhandling & misbehavior as alleged in the charge sheet stood accepted by the workman. It is also contended that workman was not holding any post in the union during the period of transfer order.

12. The question which arises for consideration is as to whether the transfer of the workman vide impugned order 11-4-02 was malafide and unjust. Admittedly, the workman was transferred from Dehradun to J&K regional office vide impugned order dt. 11-4-02 but the workman did not comply the order about 9 months. It is also admitted fact that Sr. RM, Dehradun vide its letter dated 8-9-01(C-9) addressed to the workman assured the workman for cancellation of transfer order and subsequent to this workman joined his duties in regional office of the J&K on 26-2-03 and later he was re-transferred to Dehradun within 13 days after joining duty in J&K regional office. It is also not disputed that prior to his transfer vide impugned order, several transfers were made on different region within a short spell of 2 years. From the admitted facts in the averments of both sides it is evident that workman in the year 1998 was State secretary in union at Dehradun and in the above capacity he gave notice to the management for certain demands. Subsequent to this he was transferred from Dehradun to Rajasthan region vide order dt. 18-8-98 but later on re-transferred to Delhi vide order dt. 20-9-2000. The workman was again transferred to Rajasthan regional office but later on above order was rectified and workman posted at regional office Delhi vide order dated 13-12-2000. Subsequent to this the workman was transferred from Delhi to Dehradun vide order dt. 13-6-01 and was posted at Srinagar Garhwal where he joined on 20-6-01. It is also evident from the record that workman was again transferred from Srinagar Garhwal to Rajasthan region vide order dated 4-9-01. Later transfer order was kept in abeyance till further order. During the pendency of said order, the management issued another order for transfer of the workman from Uttranchal to J&K regional office vide impugned order.

13. The workman has alleged in his statement on oath that election of trade union took place on 10-4-2002 and he was transferred on 11-4-02, to prevent him from participating in the trade union activities. He has also stated that he was charge sheeted in the year 1988 but

the charges could not be proved. He has further stated that he was state secretary and as such he was a protected workman. He was declared as protected workman by the management and he is state secretary of Uttranchal region since April 2001. He has also stated that he joined his duty in J&K regional office on 26-2-2003 under the pressure of the management. The management has not paid salary from April 2002 to March 2003. In cross examination he has admitted that he did not join his duty in above period & he has also admitted that the charge sheet dt. 13-9-91 was given to him for charges of misbehaviour and misconduct.

14. The management has not examined any witness in rebuttal of the workman's evidence. Though in written statement it is alleged that transfers of the workman were made on administrative grounds to check the nuisance activities and misuse of union powers by the workman but the management has not adduced any oral evidence to substantiate above allegations. The management has produced the copy of the memo issued to the workman and the same has been admitted by the workman in his cross examination. The documents pertaining to memorandum and article of charges alongwith other annexure (C-27 to C-30) reveal that the workman was charge sheeted in the year 1990 for alleged incident of misbehaviour in the year 1988 whereas impugned order was issued after 14 years of the incident therefore, the above incident could not be a valid ground for transferring the workman vide impugned order. The management has also produced office order dated 14-6-04 (C-40) and memorandum dated 28-5-04 (C-41) which are admitted documents by the workman. Above documents reveal that absence period of the workman during 1998 to 2000 has been regularized by the management. Other documents produced by the management are pertaining to the charges of the workman for incident occurred in the year 1998 but the workman had denied the same. Therefore, even from the documentary evidence produced by the management, it is not established that there were cogent reasons for transfer of the workman from Dehradun to J&K vide impugned order.

15. The para 9 of the transfer policy guidelines for the employees of Food Corporation of India (C-43) is relevant for the transfer of office bearer of the union which is as under :

"Office bearers of the Union/Staff Association are not immune from transfers. However, subject to administrative convenience, the President and General Secretary of the recognized Unions at the All India, Zonal and Regional levels may not be transferred outside the station during the period the employee holds such tenure. The concession will be allowed only for two tenures at a time in the capacity of President or Secretary."

16. The contention of the learned representative of the management that the workman was not State Secretary of the Bhartiya Khadya Nigam Karmchari Sangh, Uttranchal at the time of his transfer vide impugned order dt. 11-4-2002, is against the record. There is neither such pleadings in the written statement nor any documentary or oral evidence of the management to support his contention. The workman has stated on oath that he was State Secretary of the above Sangh at relevant time. His statement find support from the documentary evidence on record. Moreover, there is no evidence in rebuttal from the management side. Therefore, it is evidence that transfer of the workman from Dehradun to J&K Regional Office during his tenure as State Secretary of the Uttranchal vide impugned order, was against the transfer policy for the employees of the FCI.

17. It is settled position that who should be transferred and posted where is matter for administrative authority to decide but at the same time unless the transfer is vitiated by malafide or is made in violation of any guidelines or rules, the court should not interfere on it. But it is also settled position that the transfer cannot be made as measure of punishment although transfer is incidence of service. In the present case, in view of the factual backdrop the frequent transfers, re-transfers & cancellation of transfers of the workman during the short spell of 2 years and in absence of any oral evidence from management side showing cogent reason or administrative exigencies and particularly when the transfer of the workman were made during his tenure as State Secretary of the Sangh against the transfer policy, it is evident that transfer of the workman from Dehradun to J&K Regional Office vide impugned order was an out come of malafide exercise. Therefore, impugned order is vitiated by malafide.

18. Admittedly, in compliance of the impugned transfer order dt. 11-4-02, the workman did not join duty during the period from 11-4-2002 to 25-2-2003 and joined his duty at J&K Regional Office on 26-2-03. It is also admitted fact that subsequently the workman was re-transferred from J&K to Uttranchal Regional Office vide order dated 12-3-03. It is also not disputed that vide office order dt. 4-7-05 (C-42) the kind of leave as mentioned in the aforesaid order, has been granted by the management in favour of the workman. Thus, the period of absence has already been regularized by the said order. In view of the above facts and circumstances, the workman is entitled for the wages from 1-4-02 to 31-3-03 as per aforesaid order dt. 4-7-05.

19. Accordingly, the reference is adjudicated in favour of the workman. Since the transfer of the workman from Dehradun to J&K Regional Office vide impugned order dt. 11-4-02 was malafide & unjustified, the workman is entitled for the claimed wages subject to order dt. 4-7-05 (C-42) regarding grant of leave.

20. Award as above.

N. K. PUROHIT, Presiding Officer

Lucknow

नई दिल्ली, 15 दिसम्बर, 2008

का.आ. 60.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं एपरेल एक्सपोर्ट प्रोमोशन काउन्सिल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं.-2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी- 2/17 ऑफ 2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-2008 को प्राप्त हुआ था।

[सं. एल-42012/72/2001-आई आर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 15th December, 2008

S.O. 60.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. CGIT-2/17 of 2002) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in Industrial Dispute between the management of M/s. Apparel Expert Promotion Council, and their workman, received by the Central Government on 15-12-2008

[No. L-42012/72/2001-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT

A.A. Lad, Presiding Officer

REFERENCE NO. CGIT-2/17 of 2002

Employers in Relation to the Management of
M/s. Apparel Export Promotion Council

The Joint Director

M/s. Apparel Export Promotion Council,

Bajaj Bhavan, 12th Floor,

Nariman Point,

Mumbai-400 021.

First Party

V/s.

Their Workman

Mr. Rajendra Pillai

Mane House, Room No. 2,

Prabhat Colony, Santacruz (E),

Mumbai-400 055.

Second Party

APPEARANCES

For the Employer : Mr. B. K. Hegde, Advocate

For the Workman : Mr. B. K. Ashok, Advocate.

Date of reserving the Award : 16th May, 2008.

Date of passing the Award : 11-11-2008.

AWARD PART-II

The Government of India, Ministry of Labour by its Order No. L-42012/72/2001/IR(CM-II) dated 30-01-2002 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Apparel Export Promotion Council, Mumbai in terminating the services of Shri Rajendra Pillai w.e.f. 6-5-1997 is legal and justified ? If not, to what relief the workman is entitled to ?"

2. Claim Statement is filed at Ex-7 by the second party workman stating that, first party is an establishment sponsored by Ministry of Textiles, Government of India, where more than 300 employees are working at Mumbai about hundred.

3. By appointment letter dated 15-06-1984, second party was appointed as a Jr. Assistant on salary Rs. 6000 per month. In 1986 second party became a active member of the Trade Union known by name 'Employees Association of AEPC' which was registered under Trade Union. He was General Secretary for the period of eight years. Looking the trade union activities of second party, first party started harassing him. During the tenure of eight years as a Secretary of the Union, Union challenged all illegal activities of the first party. It also challenged unfair labour practice adopted by the first party. In all approach of the first party was against the interest of its employees and it was not tolerated by the Union. To counter check the hurdle of the Union, first party filed false and frivolous chargesheet and initiated enquiry with the help of its favourable officer. There was no evidence led against the second party. Inquiry Officer was bias. Charges were not proved, still action of dismissal was taken against the second party. So it prayed to quash and set aside the termination order dated 06-05-1997 observing enquiry not fair and proper vis-a-vis- findings perverse with direction to first party to reinstate second party workman with benefits of backwages.

4. This is registered by first party by filing Written Statement Ex-8 stating that, second party cannot raise this dispute against it since he availed the process of law available under MRTU and Pulp Act filing complaint under Section 28 (1) read with items 5 and 9 of Schedule 4 and as such res-judicata applies to the prayer of the second party workman. Besides it is stated that, second party is designated as Junior Assistant. First party is not an industry. It is just importing garments from outside countries like U.S.A., EEC, Canada, Norway. While working

with first party as Jr. Assistant, second party employee, Rajendra Pillai indulged in to grave and serious misconducts and invited charge sheet and enquiry. After giving show cause notice dated 21-10-1994 and after obtaining explanation, charge sheet was served and enquiry was initiated. Full opportunity was given to second party workman. Even State Tribunal permitted second party to be represented by legal counsel in the domestic enquiry. Charges were of serious nature. Evidence was led before Inquiry Officer and after going through it and facts placed before Inquiry Officer, he concluded second party guilty of the charges levelled against him. As the charges were of serious nature which were proved against second party, decision of dismissal was taken which is just and proper. So it is submitted that, reference be rejected observing enquiry fair and proper vis-a-vis findings not perverse.

5. In view of above pleadings, my Learned Predecessor framed issues at Ex-10. Out of them issues Nos. 1 & 2 were on the point of the enquiry and perversity of the finding of the Enquiry Officer which were decided while passing Part I award on 24th May, 2007 holding enquiry fair, proper and finding not perverse.

6. Now, remaining Issues i.e. whether the action of the Management of Apparel Export Promotion Council, Mumbai, in terminating the services of the concerned workman is legal and justified which I answer as follows :

ISSUES	FINDINGS
3. Whether the action of the Management of Apparel Export Promotion Council, Mumbai, in terminating the services of Shri P Rajendra Pillai w.e.f. 6-5-1997 is legal and justified ?	Yes
4. What relief the workman is entitled to ?	As ordered Below.

REASONS :

ISSUE NOS. 3 & 4 :

7. On this point 2nd Party i.e. the concerned Workman filed affidavit at Exhibit 25, in lieu of the examination-in-chief stating that, he was promoted on 6th May, 1997. He stated that, 1st Party i.e. M/s. Apparel Export Promotion Council is an establishment sponsored by Ministry of Textile, Government of India, having more than 300 employees out of which 100 are working at Bombay. He states that, he was designated as Junior Assistant. He states that, his service record was very clean and unblemished. He states that, he was an active leader of the trade Union. He claims that, looking to his devotion in the trade Union activities he was elected as General Secretary of the Union and looking to his Union activities he was chosen by the Management and singled out by levelling

few charges and convicted him without any reason. He also alleged that, during the tenure of his office as a General Secretary, the Management challenged each and every proposal of the trade Union and turned all those proposals just to ignore his leadership. Even he alleges that, the Management was pursuing him to withdraw the said proposals as well as asking to separate from his Union activities which he did not do in response to the proposal of the Management. So false charges were levelled against him and with the help of the Enquiry Officer Management obtained finding of the Enquiry Officer in its favour and took decision of dismissal which is not just and proper. He states that, during the course of the enquiry Management brought outside witnesses and the Enquiry Officer accepting their evidence held him guilty of the charges levelled against him. So he claims that, the decision taken by the Management of dismissal be set aside. In the cross he admits that, he is B.A., LL.B and from 1987. He states that, he was General Secretary of the Employees Association of AEPC till he was terminated. He admits that, his Union had never submitted charter of demand with first Party. He is also unable to state whether he alone was charge sheeted or whether any other charge sheet was issued like this on any other employee at Mumbai by the 1st Party. On that, issue the Management did not lead any evidence.

8. Management filed written arguments at Exhibit 27 which is replied by the 2nd Party by filing notes on the written arguments at Exhibit 28.

9. We are on point of punishment. Now we have to see what are the charges levelled against the concerned workman. The contention of the 2nd Party was that, during 3-9-1994 and 8-9-94 it was alleged that, he tampered with and pilfered and substituted the second sheet of the application for allotment of quota under FCFS system submitted on 2-9-1994 by (1) Exdon Trading Co. Ltd., (2) Elitex Pvt. Ltd., (3) Vishnuhari Exports, (4) Ambika Hosiery & Knitting Mills. As per the information given by the above exporters Mr. Pillai had gone to their office on 3rd September, 1994 along with a gentleman from the computer section to meet them and to have the discussion in connection with the replacement of annexures with new L/C number. Charge was that, accordingly new annexures were given to Mr. R. Pillai which were replaced by him and the old annexures were removed and handed over back to these exporters. Second allegation against the concerned Workman is that he has willfully and deliberately and with criminal intention to make pecuniary with intention to get benefits from the above four exporters to changed the second page of the annexures of the FCFS applications. It is alleged that, as per the information given by these four exporters, original applications were containing the L/C numbers and date viz. 944628 dated 1-9-94 and balance amount available in L/C as US \$ 111,250. It is also alleged that, this L/C was never available with the said exporters

yet he has steal those removed and replaced in its place by another page bearing a different L/C number and date. It is also alleged that, as per the information given by the said exporters that, 2nd Party demanded money from them over phone on 4th September, 1994 at about 5.00 p.m. to change the annexures and accordingly these exporters agreed to the amount demanded by him for replacing the annexures. It was also alleged that, 2nd Party visited their office on 7th afternoon between at about 12.30 p.m. to 3.00 p.m. and collected the amount referred above as agreed. The third charge levelled against the concerned Workman was that, he changed the original application according to which expiry date of L/C was 30-11-1994, whereas the expiry date as per the new annexures substituted by him is 21-12-1994 in case of M/s. Vishnuhari Exports and M/s. Ambika Hosiery & Knitting Mills and 30-11-1994 in case of M/s. Exdon Trading Co. Ltd. and M/s. Elitex Pvt. Ltd. 4th charge against the concerned Workman was that, according to the original applications all these 4 exporters were not eligible for allotment of entitlement as per L/C copy submitted by them. By that 2nd Party made them eligible for the purpose of entitlement. 5th charge was that, he played a major role in replacing the 2nd sheet of annexures which clearly impiles that, he has engaged in activities prejudicial to the interest and security of the Council and as such charge of misconduct was levelled against him under Rule 8(a), 8(c), 8(f) 8(j) and 8 (k) of AEPC Rules of Discipline, 1983 and even explanation was obtained from him.

10. Evidence brought on record reveals that, all these charges levelled against the concerned Workman were proved and enquiry was fair, proper and finding not perverse. Now, whether this Tribunal at this stage can interfere in the punishment ?

11. Besides one has to note that Part I Award which is on the point of enquiry and perversity of the finding of the Enquiry Officer, is not challenged by the 2nd Party and that order and decision subsists where it was observed that, enquiry was fair and finding not perverse.

12. Now, in view of the above i.e. whether punishment of dismissal in this background is just and proper ? It is a matter of record that, said work was assigned to the concerned Workman which he attended. He attended the same. Even it is matter of record that, he visited the offices of the said exporters. Said charge of misconduct levelled against the concerned Workman was proved. Said charge levelled against the 2nd Party when were proved and when punishment which is available as per rule which is given in that case, it cannot be now alleged that, victimization is there while giving such a punishment ? For that 1st Party placed reliance on the decision of the Apex Court given in the case of Bharat Iron Works and Bhagubhai Balubhai Patel & Ors. reported in 1976 (32) FLR page 72 where it was observed that, where such a punishment which

is based on the proved misconduct in that case, person who suffers from the punishment cannot claim victimization. Besides reliance was placed on the decision given in the case of Khandu Krishna Bhogade v/s. Kalyani Steel Ltd. & Ors. reported in 1995 I CLR page 58 where Hon'ble High Court observed that, when there is a finding of "proved misconduct", then case of "victimization" cannot sustain. Same view is taken by our Hon'ble High Court while deciding case of H.R. B.H. Siddiqui v/s. Brihan Mumbai Electric Supply & Transport Undertaking & Ors. reported in 2007(2) Mh. L.J. page 579. When charges are proved in that case, employee cannot claim leniency as observed by Apex Court while deciding case of Divisional Controller; K.S.R.T.C. 9K.N.W.R.T.C. v/s. A.T. Mane reported in 2004 (107) FJR page 741. Even 1st Party placed reliance on another decision of the Apex Court laid down while deciding the case of B.C. Chaturvedi where it was observed that, when enquiry was observed fair and proper and finding not perverse, in that case Tribunal cannot interfere in the quantum of punishment awarded by the Disciplinary Authority based on such a finding. Same view is taken by Apex Court while deciding case of Union of India & Anr. v/s. G. Ganayutham reported in 1997 II CLR page 956. As per Section 11A of the Industrial Disputes Act, 1947 the Tribunal cannot sit in appeal over the quantum of punishment unless the punishment is shockingly disproportionate. When there is enquiry which was observed legal, proper and finding not perverse. Same view is taken by Apex Court while deciding the case of Damoh Panna Sagar Rural Regional Bank & Ors. v/s. Munnalal Jain reported in 2005 I CLR page 821. 1st Party also placed reliance on the decision given by Apex Court while deciding the case of Mithilesh Singh v/s. Union of India & ors. reported in 2003 (102) FJR page 479 where it was observed that, Tribunal has very limited scope on the point of punishment unless it is shown by the concerned Workman that, it is shockingly disproportionate. Same view is taken by our Hon'ble Bombay High Court while deciding the case of Brihan Mumbai Municipal Corporation v/s. Arun Golatkar reported in 2004 III CLR page 14. When charges are proved, observing enquiry fair and proper and finding is not disturbed then in that case, question of past record though it is unblemished does not have role to play on the bases of the finding of the enquiry as observed by Apex Court while deciding case TNCS Corporation Ltd. & ors. v/s. K. Merrabai reported in 2006 SCC (L&J) page 265. Same view is taken by Apex Court while deciding case of Depot Manager, APSRTC Corporation v/s. Raghuda Siva Sankar Prasad reported in 2007 (112) FLR page 703. Even Apex Court while deciding case of Union of India and ors. v/s. Narain Singh reported in AIR 2002 SC 2102 observed when Tribunal comes to the conclusion that, charges are proved and that, there are serious charges in that case, very little scope is with the Tribunal to interfere with the punishment. Even Hon'ble Bombay High Court while deciding the case of Brihan Mumbai Municipal Corporation

& General Secretary, BEST Workers reported in 2005(1) Bom.L.C. page 585 where it is observed that, when serious charge of falsification of record is levelled against the charge sheeted employee and when it is proved, in that, case lenient view cannot be taken.

13. As stated above charges levelled against the concerned workman have been proved. There was enquiry, there was evidence before the Enquiry Officer. Enquiry Officer gave finding holding concerned Workman guilty of the charges. Those charges were of serious nature.

14. When charges are of serious nature, finding of the enquiry officer is not perverse, question arises, whether such a punishment can be questioned even by this Tribunal under Section 11A of the Industrial Disputes Act, 1947 ?

15. As stated above Section 11A of the Industrial Disputes Act, 1947 does not permit this Tribunal to sit in judgment when charges as proved by the Enquiry Officer which was observed fair and proper and finding was observed not perversed. So in my considered view no scope remain to consider the prayer of the 2nd Party to observe that, punishment was shockingly disproportionate. Here charge of taking bribe, charge of changing records which are of very serious nature were levelled and proved. According to me these charges are of serious nature which have been proved and based on that punishment is imposed upon the concerned Workman. So Section 11A of the Industrial Disputes Act, 1947 does not permit me to interfere with the punishment awarded to the 2nd Party. So I answer above issue accordingly and pass the following order :

ORDER

Reference is rejected with no order as to its costs.

Bombay,

Date: 11th November, 2008

A. A. LAD, Presiding Officer

नई दिल्ली, 15 दिसम्बर, 2008

का.आ. 61.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैं नेशनल एविएशन कम्पनी ऑफ इंडिया लि. के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कोच्चिन के पंचाट (संदर्भ संख्या 29/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-2008 को प्राप्त हुआ था।

[सं. एल-11012/29/2008-आई आर(सी-1)]

स्वेच्छा लता जवास, डेस्क अधिकारी

New Delhi, the 15th December, 2008

S.O. 61.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government here by publishes the Award (Ref. No. 29/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Cochin now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. National Aviation Company of India Ltd. and their workman, which was received by the Central Government on 15-12-2008.

[No. L-11012/29/2008-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERIAKULAM
Present: Shri P.L. Norbert, B.A., LL.B., Presiding Officer
 (Friday the 28th day of November, 2008/7th Agrahayana, 1930)

I.D. No. 29 OF 2008

Workman : Shri Joseph Benedict,
 T.C. 78/1753, kochuthoppe,
 Vallakadavu P.O.,
 Thiruvananthapuram-695008.

Management : The General Manager (Personnel),
 National Aviation Company of India Ltd.,
 Airlines House, Meenambakkam,
 Chennai-600027

By Adv. M/s. Menon & Pai.

This case coming up for hearing on 28-11-2008, this Tribunal-cum-Labour Court on the same day passed the following.

AWARD

This is a reference under Section 10(1)(d) of Industrial Disputes Act challenging dismissal of Sri Joseph Benedict from the service of National Aviation Company of India Limited. Though notices were issued to both sides the management alone has entered appearance. The worker is remaining absent continuously. Hence it has to be presumed that there is no existing industrial dispute for adjudication.

In the result, an award is passed finding that the action of the management in dismissing Sri Joseph Benedict from service of National Aviation Company of India Limited is legal and justified and he is not entitled for any relief.

Decated to the Personal Assistant, transcribed and typed by her and corrected and passed by me on this the 28th day of November, 2008.

P.L. NORBERT, Presiding Officer

Appendix : Nil

नई दिल्ली, 15 दिसम्बर, 2008

का.आ. 62.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भै. बी. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम च्यायालय संख्या नं. 1, धनबाद के पंचाट (संदर्भ संख्या 274/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-2008 को प्राप्त हुआ था।

[सं. एल-20012/163/2000-आई आर(सी-1)]

स्लेह लता जवास, डेस्क अधिकारी

New Delhi, the 15th December, 2008

S.O. 62.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government here by publishes the Award (Ref. No. 274/2000) of the Central Government Industrial Tribunal-cum-Labour Court, No. I, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workman, which was received by the Central Government on 15-12-2008.

[No. L-20012/163/2000-IR (C-I)]

SNEH LATA JAWAS, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL NO. I, DHANBAD.

In the matter of a reference U/s. 10(1)(d)(2A) of I.D. Act.

Reference No. 274(C) of 2000

Parties : Employers in relation to the management of Dhansar Colliery of M/s. BCCL.

And

Their Workman.

Present : Shri H.M. Singh,
 Presiding Officer.

APPEARANCES

For the Employers	:	Shri R.N. Ganguly, Advocate.
For the Workman	:	Shri R.A. Chamaria, Advocate.

Dated, the 1st December, 2008.

AWARD

By Order No. L-20012/163/2000-IR(Coal-I) dated 18/19 September, 2000 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-sec. (1) and sub-section(2A) of Industrial Disputes Act 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Dhansar Colliery of M/s. BCCL in denying employment to Sri Sahadev Bhuria defendant S/o Late Rupan Bhuria is justified? If not, to what relief is the defendant son of the deceased workman entitled?”

2. Written statement filed on behalf of the workman stating that the concerned workman late Rupan Bhuria was an employee of the management and worked as Wagon Loader at Dhansar Colliery. His Identity Card Number was 116479 and CMPF number was C/407797. He died while in service on 17-2-1986. The only dependent son of said deceased employee is Sahadeo Bhuria, who was minor at the time of death of his father and he was only 15 years old, Sahadeo Bhuria applied earlier as well as in the year

1991 for employment being dependant of the deceased employees. The management on receiving said application from Sahadeo Bhua had sought for police verification from his native village of the deceased employee. The report of the Superintendent of police was received in the M. P. & R. Sec. Koya Bhawan from Kusunda area in the month of May, 1996. The report confirmed that Sahadeo Bhua is the son of the deceased workman. As per NCWA which is applicable to the management, one dependant of deceased employee is entitled for employment, having no other means of livelihood. But the Personnel Manager, Koya Bhawan, Dhanbad in his letter No. BCCL/PA-6/3/(13)/sri/6/4/92/36240 dated 9-10-92 addressed to the General Manager, Kusunda Area had written that the competent authority has rejected the claim of employment of the said dependant son of the said deceased employee. After denial by the employer from providing employment to the said dependant son is illegal, arbitrary unjustified and violation of NCWA. So in this respect an industrial dispute was raised before the A.L.C.(C), Dhanbad through the union vide letter dated 22-2-99. The conciliation proceedings were held, but ultimately the conciliation proceeding ended in failure and the report was sent to the Ministry. The Ministry on considering the report has referred the matter to this Tribunal for adjudication. During conciliation proceeding the management submitted their reply vide letter dated 22-9-99. At page 6 of the letter the employers has stated that the case of the dependant son was not put up before the competent authority who regreted the same due to under age. In para 4 of the said letter the management has admitted that said Sahadeo Bhua had applied for employment in the year 1991 after a lapse of about 5 years of death of Rupan Bhua. It has been stated that when Sahadeo Bhua became adult he applied for the same, but the management did not provide employment to him.

It has been prayed that the management be directed to provide employment to the dependant son of the deceased Rupan Bhua with retrospective effect.

3. The management has filed written statement stating that the reference is not legally maintainable and bad in law. It has also been submitted that Rupan Bhua was a permanent wagon Loader of Dhansar Colliery who died while in service on 17-2-86 and after the death of Rupan Bhua no dependant of the deceased workman approached the employers for employment under the provision of National Coal Wage Agreement. It has also been stated that provision for employment of dependant of employees has been made in order to mitigate the financial hardship of the family of the deceased worker due to his sudden and premature death resulting in drying up of financial resources and in that event the employment is provided to the dependent immediately after or shortly after death. The above reference has been made and Sahadev Bhua applied for employment in place of late Rupan Bhua in the year 1991, after 5 years of the death of his father. So no employment can be given and it has been prayed that the reference be answered in favour of the management holding that the action of the management in not providing employment Sahadev Bhua, dependant son of late Rupan Bhua is justified.

4. The workman has produced WW-I Sahadev Bhua, who has supported his case. He has proved documents which have been marked as Exts. W-1, W-2, W-3, W-3/1 and W-3/2. No evidence has been produced by the management.

5. As per para 5 of the written statement of the management, it shows that under N.C.W.A. dependant son Sahadeo Bhua applied for employment though at the time of death of Rupan Bhua on 17-2-1986 he was minor. As per N.C.W.A. III-9.4.1 & 9.4.2 it has been mentioned:-

9.4.1-Employment would be provided to one dependant of workers disabled permanently and those who meet with death while in service. This provision will be implemented as follows:

9.4.2-Employment of one dependant worker who dies while in service.

(i) The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, younger brother, widowed daughter/widowed daughter-in-law of son-in-law residing with the deceased and almost wholly dependant on the earning of the deceased may be considered to be the dependants of the deceased.

(ii) The dependents to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit shall not apply in the case of spouse.

6. The document which has been filed by the workman shows that the management has regretted for appointment of the concerned workman on compassionate ground without mentioning any reason. As it is accepted by the management that Sahadeo Bhua is the only son of Rupan Bhua, the deceased employee of the management, so as per NCWA the management is bound to provide employment to Sahadev Bhua, dependant son of Rupan Bhua, the deceased employee of the management.

In view of the discussion made above, I come to the conclusion that the management is not justified in denying employment to Sahadev Bhua, dependant son of late Rupan Bhua, hence he is entitled to be provided employment under NCWA.

7. Accordingly, the following award is rendered. The action of the management of Dhansar Colliery of M/s. BCCL in denying employment to Sahadev Bhua dependant son of late Rupan Bhua is not justified. The management is directed to provide employment to Sahadev Bhua, dependant son of late Rupan Bhua, within one month from the date of publication of award.

नई दिल्ली, 16 दिसम्बर, 2008

का.आ. 63.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैं स्टेट बैंक ऑफ इंडिया प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण नं. 1, धनबाद के पंचाट (संदर्भ संख्या 01/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-12-2008 को प्राप्त हुआ था।

[सं. एल-12012/291/1995-आई आर(बी-1)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th December, 2008

S.O. 63.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government here by publishes the Award (Ref. No. 01/2001) of the Central Government Industrial Tribunal-cum-Labour Courts No. I, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers management of State Bank of India, and their workman, received by the Central Government on 16-12-2008.

[No. L-12012/291/1995-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, AT DHANBAD.

Present : Shri Hari Mangal Singh, Presiding Officer.
In the matter of a reference under Section 10(1)(d) of
the I.D. Act, 1947.

Reference No. 1 of 2001

Parties : Employers in relation to the management of State Bank fo India, Hazaribagh and their workman.

APPEARANCES

On behalf of the workman : Mr. G. K. Verma,
General Secretary,
State Bank of India
Employees Union.

On behalf of the management : Shri Pawan Kumar,
Law Officer.

State : Jharkhand Industry : Banking.

Dated, Dhanbad, the 2nd December, 2008.

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 had referred the following dispute to the Central Govt. Industrial Tribunal No. 2, Dhanbad vide Ministry's Order No. 12012/291/95-I.R. (B), dated, the 23rd June, 1997. Subsequently the said reference was transferred to Central Govt. Industrial Tribunal No. 1, Dhanbad from Central Govt. Industrial Tribunal No. 2, Dhanbad vide order of even No. dated Nil October, 2000.

SCHEDULE

"Whether the action of the management of State Bank of India, Ghatotkach Branch by not confirming Sri Deo Brat Gupta w.e.f. 1-10-1979 and also depriving him of becoming a member of its Provident Fund Scheme along with consequential benefits etc, is justified? If not, to what relief the workman is entitled?"

2. The case of the workman as disclosed in the Written Statement submitted by the sponsoring union of behalf of the concerned workman is that Sri Deo Brat Gupta, the concerned workman was appointed in the service of State Bank of India at the then Ghatotkach Sub-Office under its Ramgarh Branch on 1st January, 1979 after interview by the then Branch Manager. Subsequently the said Sub-Office was upgraded as an independent branch on 27th December, 1980. It has been submitted that initially the management kept him at paltry daily wages of 50 paise per day or Rs. 15 per month later the wages were enhanced to Rs. 100 per month and the same through the Secretary of the Branch's Local Implementation Committee by debiting to Bank's Welfare Account till 31st December, 1981. The services of the concerned workman were utilised from 1-1-1979 to 31-12-1981 as Sweeper (Fartash) Water boy and Messenger but he was not allowed to mark his attendance in the Bank's Attendance register though he always worked for the whole day.

3. In para 5 of the W.S. the workman has asserted that according to the Bank's rules as enumerated in Circular No. 247 of 1966 management should have offered permanent appointment to the concerned workman on 1-10-1979 upon completion of 9 months aggregate service in the Bank but the management in violation of the above rules kept the concerned workman as temporary on meagre fixed monthly wages instead of scale wage. However, upon persuasion by the union of the workman the management started him paying scale wage of Subordinate Cadre to the concerned workman w.e.f. 1-1-1982 and designated him as Messenger-cum-Waterman and allowed him to mark attendance in the Branch Attendance Register. However, the concerned workman was deprived of the benefits of permanent employment and also was not granted annual increments for every year of completed service. The representation of the workman/Union in this regard was not even replied to by the management. The concerned workman was directed to appear before the interview on 1-9-85 at Hazaribagh Branch vide letter No. BM/No. 6/117 dated 31st August, 1985 and accordingly the concerned workman appeared before the interview but the concerned workman was not communicated the result of the interview. Subsequently they terminated his services on 4-4-1987 on the ground of his overage at the time of initial appointment on 1-1-1982, though he was well within the prescribed age for employment. Thereafter an industrial dispute was raised which resulted reference before the Central Govt. Industrial Tribunal No. 1, Dhanbad bearing Reference No. 126 of 1988. In course of hearing of the above reference before the Central Govt. Industrial Tribunal No. 1, Dhanbad management contended that the appointment of the concerned workman was ab initio void and non-existent as at

the time of appointment on 1-1-1982 the concerned workman was over-aged and over qualified. But those pleas of the management were rejected by the Hon'ble Tribunal and held on the basis of evidence on record that the concerned workman had been working in the Bank from 1-1-79 to 31-3-1980 as Sweeper-Cum-Waterboy, as Canteen Boy from 1-4-1980 to 31-12-1981 and later as Messenger-Cum-Waterman from 1-1-1982. He actually worked as a Furrash cleaning the counter and furniture of the Bank and not the toilet from January, 1979 to March, 1980. However, the Tribunal by its Award dated 28th February, 1990 held the action of the Branch Manager of State Bank of India, Ghatotkach Branch, Hazaribagh in terminating the services of the concerned workman as not justified and directed to reinstate him w.e.f. 5-4-1987 with full back wages and to give him annual increments as per Rules.

4. The Bank Management challenged the Award and preferred an appeal before the Hon'ble Patna High Court, Ranchi Bench vide C.W.J.C. No. 940/90 (R). Subsequently, the appeal was dismissed by an order dated 1st July, 1990 by the Division Bench which refused to interfere with the aforesaid Award. Subsequently, upon intervention of the ALC(C), Hazaribagh the then Branch Manager of State Bank of India, Ghatotkach Branch reinstated the concerned workman Shri Deo Brat Gupta as Temporary Messenger by his letter No. 11/204 dated 22-10-1990 and paid him a sum of Rs. 63,545.58P. as back wages. In the appointment letter issued to the concerned workman, he was described as his new appointment and he was deprived of the benefit of becoming a member of Contributory Provident Fund Scheme with retrospective effect, and conveyance allowance was also not paid him. Since the concerned workman was deprived of the benefits of permanent employment e.g. seniority and membership of the Bank's Scheme and Mutual Welfare fund and confirmation a fresh industrial dispute was raised before the ALC(C), Hazaribagh on 1st July, 1994. In course of conciliation preceding the management instructed the concerned workman to appear for interview at the Chamber of Personnel Manager at Bank's Ranchi Zonal Office on 29-12-1994 for absorbing him in permanent service. Accordingly the concerned workman obeyed the instructions once again.

5. In course of conciliation proceeding management informed the Conciliation Officer vide their letter AGM IV/21/ST/SPL/No. 97 dated 29th December, 1994 that the process of appointment of Sri D. B. Gupta, concerned workman as Messenger in the Bank's service on permanent basis had already been started because the concerned workman appeared before an Interview Board on 29-12-1994. Same fact was also communicated again to the Conciliation Officer vide management's letter dated 16th January, 1995. Ultimately on 23-9-1996 the management informed the Conciliation Officer that the concerned workman could not be given permanent appointment because of the reasons as mentioned in para 19 (i) & (ii) of the W.S. of the workman.

6. It has been submitted by the workman side that the contention made by the management in paragraph 19

(ii) is incorrect and mischievous because this would mean that the concerned workman Shri Gupta would continue to remain temporary for all the time. The said Bipartite Settlement dated 17th November, 1987 was a private agreement under section 2(p) and Section 18(i) of the I.D. Act, 1947 and as such it was not applicable on the concerned workman who belonged to State Bank of India Employees Union (Bihar State) which was not affiliated to All India State Bank of India Federation which entered into the said agreement with the management. In terms of the said Settlement the notice inviting application from temporary employees was displayed at the Notice Board of Ghatotkach Branch of the Bank from 1st August to 30th August, 1988 according to the Bank's Circular. However, during this period the concerned workman was already terminated from service on 4th April, 1987, and the dispute of unfair termination was already pending adjudication before the Central Govt. Industrial Tribunal No. 1, Dhanbad vide Reference Case No. 126 of 1988.

7. It has been submitted by the workman side that the concerned workman Sri Deo Brat Gupta is in service of the State Bank of India at its Ghatotkach Branch since 1979 and it is now for more than 18 years and 6 months that he is working against a permanent vacancy. According to the definitions given in Sastry Award (1953), Desai Award (1962) and First Bipartite Settlement (1966) Sri Gupta cannot legitimately be considered as "Temporary Employee". The post on which he is working is also permanent.

8. It has been further stated in the W.S. of the workman that the State Bank of India management issued a circular in 1966 bearing number 247 of 1966 introducing a Scheme for absorption of temporary Subordinate Cadre (Class IV) employees in permanent employment of the Bank which, interalia, provided that those temporary employees who completed more than 9 months aggregate service shall be offered appointment in permanent Cadre straightway i.e. without subjecting them to any interview etc. Specific reasons were to be adduced by the branch authorities for such temporary employees who were not considered suitable for permanent employment. The management neither absorbed the concerned workman Sri Gupta in permanent service of the Bank on completion of 9 months aggregate service nor declared him suitable for such absorption in permanent service according to the aforesaid circularised Rules in this respect. The workman side in their W.S. have cited the case of one Surendra Mishra who was appointed as Godown Watchman on 13-5-1969 and his confirmed to be treated as temporary staff on completion of 9 months aggregate service on 13-2-1970 and his services were terminated all of a sudden on 11-10-1971. The then Central Government Industrial Tribunal No. III, Dhanbad passed an Award holding the termination of Shri Mishra as unjustified and further ordered for reinstatement of the concerned workman with payment of back wages. They have stated that the case of the concerned workman is similar to the case of Shri Mishra. In their W.S. the workman have also stated the rule of promotion of confirmed Subordinate cadre employees to Clerical Cadre. It has been stated that the concerned workman has been deprived of the opportunity of

promotion to Clerical Cadre with higher wages and other allowance as admissible both under Merit-cum-Seniority Channel due to his non-confirmation by the management.

Accordingly it has been prayed by the workman side to pass an Award holding that the action of the management in keeping Sri Deo Brat Gupta as temporary for the past 18 years and not confirming him in service on completion of 9 months aggregate service on 1-10-1979 is wholly unjustified and he is entitled to all benefits of permanent employment including seniority and membership of Contributory Provident Fund with promotion to the Clerical Cadre flowing out of the said confirmation in service with retrospective effect from 1-10-79.

9. Management have filed their W.S. in which they have stated that the concerned workman has failed to establish his right for regularisation in the service of the Bank in his claim because has not furnished copy of any appointment letter, if any issued to him. He was a daily wage worker initially at the canteen run by the Local Implementation Committee which is not an establishment of the Bank in as much as the appointment in the canteen is not made by the Bank.

10. It has been further stated by the Bank management that the concerned workman was not issued any appointment letter because he was not working against any regular or sanctioned post and while engaging him the Rules of appointment in the Bank was not followed. Any person including the concerned workman cannot have any right of regularisation in the service of the Bank who are engaged occasionally by local functionaries of the Bank without proper authorisation. Any person including the concerned workman entering into service of the Bank through the back door without proper adoption of laid down procedures cannot claim the right of regular appointment in the Bank. The concerned workman cannot be considered for regularisation without following well established process of selection. He also cannot be considered in violation of the eligibility criteria fixed by the Bank in the view of the Judicial Law Laid down by Hon'ble Supreme Court reported in A.I.R. 1995 SC 413, A.I.R. 1922 SC 2130 and 1994 (2) L.L.J. 888(SC) which inter alia states that a temporary employee can claim permanent employment only according to the relevant rules/schemes of the establishments. It has also been stated that the concerned workman cannot have right for regular appointment in the Bank any further because he has not seized the opportunity opened up to him in terms of settlement between the management and the Workman Union of the Bank which settlement was binding on all. Management side have asserted that the claim of the workman is unfounded, unreasonable, unjustified, illegal and accordingly it has been prayed by the management to dismiss the claim of the concerned workman as not maintainable.

11. Both sides have filed their respective rejoinder admitting and denying the contents of some of the paras of each other's Written Statement.

12. Management in order to substantiate their claim have examined Sri Sanjay Kumar as MW-1 who has proved

the documents marked as Ext. M-1, M-2, M-3, M-3/1, M-4, M-4/1, M-5 and M-6. Management also produced and examined Shri B. P. Sinha, as MW-2. Workmanside in order to substantiate their claim has produced and examined Shri Purnendu Sekhar Paul as WW-1 who have proved Ext. M-4 and also Ext. W-10, W-11 and M-3. The workmanside also produced the concerned workman and examined him as WW-2 to substantiate his claim.

13. It has been argued on behalf of the management that an Award has been passed regarding the above workman in Ref. No. 126 of 1988 dated 28th February, 1990. In the said Award the relief of confirming the applicant/ workman w.e.f. 1-10-1979 was not given by the Tribunal though the union has prayed for continuity of service. The above award has been complied by the Bank and above Award speaks simply for the reinstatement of the concerned workman and payment of back wages to him. Now no new award can be passed by this Tribunal regarding name employee and same facts. It has also been argued by the management that as per Bipartite Settlement dt. 17-11-87 the concerned workman has not responded to the advertisement taken out by the Bank for permanent appointment. No. therefore, forfeited his right for consideration for permanent appointment. The same fact has also come in the evidence and Shri Gupta, the concerned workman has also accepted the same in his evidence. It has also been argued that a person who is working in a temporary capacity is not entitled for permanent absorption as per decision held in Uma Devi's case by the Hon'ble Supreme Court.

14. The representative of the workman argued that the concerned workman Sri Deo Brat Gupta was appointed at the then Ghantotand Sub-Office under Ramgarh Branch of State Bank of India on 1-1-79 in Subordinate (Class IV) cadre and on 27-12-1980 Ghantotand sub-office became a Branch. He was initially paid daily wages of 50 paise and thereafter the Bank paid him monthly wages of Rs. 150 per month till 31-12-81. During this period he performed the duties of Sweeper-cum-Furrash and Messenger-cum-Water Boy. According to the Bank's Rules vide Ext. M/4 after completion of 9 months aggregate service he should have been offered permanent appointment in the Bank's Service. But the Bank did not do so nor they assigned any reason for finding Sri Gupta unsuitable for the post on which he was working. The management illegally ignored the provisions of their own rules Vide Ext. M-4. This rule was applicable even in 1979 and thereafter was not discarded or superseded by any speaking order. The rule regarding straightway absorption of temporary employees in permanent employment, i.e. confirming them in service after 9 months is still in vogue as per the following uncontested statement of WW-1 "By Ext. M-4 the policy decision was taken by the management that any temporary worker working as subordinate employee for a period of nine months would be confirmed employee. This circular has not been withdrawn by the Bank." It has also been confirmed during cross-examination of MW-1 Sri Sanjay Kumar, Manager (Personnel & HRD) Region-4 State Bank of India, Zonal Office, Ranchi has deposed "I am not aware of the fact whether the circular dated 22-8-66 issued by

Calcutta Head Office (Ext. M-4) had been specifically superseded by any subsequent circular." The management, however, continued to violate rules envisaged in Ext. M-4 and treat the concerned workman as temporary and also denied him the benefits of permanent employment though they started paying him wage scale of subordinate cadre w.e.f. 1-1-82 though the workman worked till 4-4-87 as such. In the Award dated of Ref. No. 126/88 marked as Ext. M-2 it has been stated in para-12 and 13 "The case of the management is that the service of the concerned workman was terminated after it was noticed and discovered by the Controlling Authority of Ghatotand Branch Manager that the appointment was ab initio irregular, unauthorised and void." The management has not led any evidence on this point. Vide Ext. W-6 the management asked the concerned workman to appear for a personal interview before the Personnel Officer of the Bank's Regional Office, Ranchi on 1-9-1985 at Hazaribagh. The concerned workman fared well and apparently passed the oral test as he was continued in service till 4-4-87 when the Bank illegally terminated his service on the alleged ground that he was over-aged at the time of his appointment on 1-1-82. The above alleged ground for termination of service of the concerned workman on 4-4-1987 has been discussed in details in the Award dated 28th February, 1990 in reference No. 126/88 before this Tribunal, marked as Ext. M-2 in the present Reference. The then Presiding Officer rejected the pleadings of the management that the concerned workman was not legally in the service of the Bank prior to 1-1-1982 because the then Branch Manager in utter violation of rules went beyond his authority in keeping the concerned workman in service, and therefore, the appointment was rendered void ab initio and no increment was given to the concerned workman as he was engaged unauthorisedly. On the question of the concerned workman being in service of Ghatotand Branch of State Bank of India prior to 1982 and, thus being within the prescribed age for recruitment in the Bank's subordinate service. In Award Ext. M-2 it has been mentioned that "having regard to the evidence on record I am constrained to hold that the concerned workman had been working for the Bank from 1-1-79 to 31-3-80 as Sweeper-cum-Water Boy and later as Canteen Boy from 1-4-80 to 31-12-81". The above fact has been supported by MW-2 on 5-3-2003 when during cross-examination he deposed that he had not seen any record of the Bank which would show that earlier to 1-1-1982 the concerned workman was not working at Ghatotand Branch. Obviously in Ext. M-2 as per para-14 of page 19 of the Award it has been mentioned "obviously he was not over-aged at the time when he worked either as Sweeper-cum-Water Boy or as Canteen boy. In this view of the matter he was not over-aged". In Ext. M-2 it was held by the Tribunal that the termination of service of the concerned workman on 4-4-1987 as not justified and directed the management to reinstate the concerned workman in service w.e.f. 5-4-1987 with full back wages and annual increment as per rules. The management unsuccessfully contested the said Award in a Division Bench at Patna High Court, Ranchi Bench in C.W.J.C. No. 940/90. When a question regarding the concerned workman being over aged as on 1-1-1982 has already been decided in a judicial proceedings by the said Award, the Bank is estopped from raising the issue once again. Moreover, the present Reference is not regarding his eligibility for appointment in service.

15. It has been further argued by the workman side that the Bank management went on to harass the concerned workman

and refused to reinstate him and only upon the intervention of the ALC(C), Hazaribagh the management took in service on 22-10-1990. The Ghatotand Branch management in order to deprive the concerned workman his right of confirmation in service w.e.f. 1-10-79 and consequential benefits e.g. P.F., Pension etc. issued a letter to him on 22-10-1990 indicating that he was a new appointee. Upon protest of the concerned workman the Bank's Patna Local Head Office instructed Ghatotand Branch Manager to issue another letter to the concerned workman incorporating the fact of reinstatement of Ext. W-1. The Bank is illegally treating the concerned workman as a temporary employee depriving him the benefits of permanent employment including the benefits of contributory Provident Fund and other consequential benefits, e.g. pension, entitlements for promotion to clerical cadre etc. The quantum of pension payable is calculated on the basis of wage paid from the date of confirmation to the date of reaching the age of superannuation.

16. The management in no way wants to confirm the concerned workman only on the ground that in Ext. M-2 it has been directed for reinstatement and paying back wages with increments only and no order for permanent appointment in the Bank has been passed. This attitude of the management is not reasonable because when as per Ext. M-2 it has been that the concerned workman be reinstated in service, it includes all benefits regarding regularisation, opportunity of becoming member of its provident fund scheme and other facilities etc.

17. The representative of the concerned workman also referred to Ext. M-3/1 which is Bank's A.G.M.'s letter dated 23-9-95 addressed to the ALC(C), Hazaribagh. In this letter two reasons had been cited by the management as to why the concerned workman Sri D.B. Gupta cannot be given permanent appointment in the Bank's Service.

- (i) That CGIT simply ordered for reinstatement and paying backwages with increments. Since the concerned workman was working as temporary employee prior to the termination of his service on 4-4-87, he was reinstated as such, and
- (ii) that Sri Gupta has forfeited his right for permanent appointment in the Bank because he did not respond to the advertisement taken out by the Bank pursuant to the Bipartite Settlement dated 17-11-1987.

The Award dated 28-2-1990 marked as Ext. M-2 does not indicate that the workman would remain temporary after reinstatement. None of the management's witnesses deposed in favour of the management on this score. The sponsoring union as per Ext. M-6 had pleaded before the CGIT in Ref. Case No. 126 of 1988 that the Bank should have confirmed or absorbed the concerned workman in permanent service with retrospective effect i.e. prior to termination of his services on 4-4-87. However, since the schedule of Reference No. 126 of 1988 speaks about illegal termination of service so only that point has been decided by the Tribunal and no other point such as regularisation/confirmation of the concerned workman. For the said reason

a fresh dispute was raised regarding confirmation in service of the concerned workman and the Government was pleased to refer the present dispute, to this Hon'ble Tribunal for a fresh adjudication. So it cannot be said that it is barred by the Reference which has been decided in Ref. No. 126/88.

18. Regarding the plea by the management that as per Ext. M-3/1 the concerned workman has not responded to the advertisement taken out by the Bank pursuant to the Bipartite Settlement dated 17-11-1987 Annexure-A to Ext. M-3. The above stand has been taken by the management is wholly incorrect because the above advertisement has not been produced by the management as an Exhibit. Neither any witness has been examined in this regard and the contents of the advertisement were also not known. The agreement dated 17-11-1987 has been filed as Annexure-A of Ext. M-3. There is absolutely nothing in the said agreement stating that any one who did not respond to the agreement would forfeit his right of absorption in permanent cadre after completion of 9 months in temporary cadre, because none of the witness of the management referred to the said exhibit and pointed out the alleged provision. In this context it shall be worth quoting as to what one of the management's witness stated regarding the falsehood of the pleas of forfeiting for even the entitlement of confirmation. In course of cross-examination MW-1 admitted that the concerned workman was free to apply for his absorption. It is correct that in the year 1985 and then again in the year 1994 also the concerned workman faced interview for his absorption but the result of those interviews were not communicated to him. It shows that the management has taken interview of the concerned workman but no result of the interview was communicated to him. So it shows that the concerned workman had participated in the interview for permanent absorption in Bank's service. Management illegally and without any basis alleged that the concerned workman has not participated in the interview for permanent absorption in the Bank's Service because of the fact that the Bank himself issued letters to the concerned workman to appear before the interview for absorption as per Ext. W-6 and W-7. Therefore, the management's pleas are bogus that the concerned workman did not respond to Ext. M-3 and that he has forfeited his right for regularisation. Moreover, MW-2 in his cross-examination stated about the interpretation "I have not seen any letter by which the concerned workman was communicated that if consideration regarding his absorption or regularisation would be made than the same would be in violation of the terms of the circular". The said circular Ext. M-3 was not shown to the concerned workman even after reinstatement in service in 1990. The then Branch Manager MW-2 stated during cross-examination "I cannot say whether the copy of the said circular served upon the concerned workman or not and his acknowledgement thereon was taken or not as per the Bank's rules." Though this has got no meaning because WW-2 in cross-examination stated that the circular is not supplied to every one, and the contents of the circular is not known to all.

19. There is no evidence on record of the Reference to show much less prove that Sri Deo Brata Gupta was/is a member of any union affiliated to All India State Bank of India Staff Federation or that the sponsoring union—State

Bank of India Employees Union (Bihar State) Patna was/is affiliated to the said Federation. WW-1 has also deposed that the sponsoring union was not a party in the agreement Ext. M-3. So the agreement does not concern the concerned workman. In this regard MW-1 in his cross-examination on 3-12-2002 deposed "It is a fact that a Bipartite Settlement does not have any binding effect as far as the third party is concerned. I am not in a position to say whether the circular (Ext. M-3) has got binding effect on the concerned workman." So it shows that the above circular has got no binding effect upon the concerned workman and it cannot create any hurdle towards the confirmation of the concerned workman and it only shows that the management without any reason does not want to confirm the concerned workman.

20. It is no doubt that as per Ext. M-1 the concerned workman was born on 1-10-1955. He worked as Messenger at Ghantotand Branch (on scale wage of subordinate cadre) since 1-1-1982. In Ext. M-2 the Award dated 28-2-1990 in Reference No. 126 of 1988, the matter relating to the concerned workman working continuously between 1-1-1979 and 31-12-1981 has already been decided in favour of the workman. It is, therefore, clear that for last 30 years he is working at Gantotand Branch. He is now about 53½ years and after about 6½ years he will reach the age of superannuation. So a workman who has rendered 30 years continuously on a particular post cannot be termed as "Temporary Employer". Ext. W-8 is Sastry Award dt. 26-3-1953 and Ext. W-9 is Desai Award dated 13-6-1962 where classification of employees is given. In clause (c) of paragraph 508 of Sastry Award, temporary employee has been defined as under :—

"Temporary employee means a employee who has been appointed for a limited period for work which of an essentially temporary nature, or who is employed temporarily as an additional employee in connection with a temporary increase in work of a permanent nature."

Desai Award (Ext. W-9) adopted the above definition of temporary employee. An employee who is working for past 30 years on a post at one branch of the Bank cannot be called a "temporary" employee even by any stretch of imagination by a prudent mind. Management has in similar cases in Ref. No. 75/97 and Ref. No. 1/2001 has given benefit of Sastry Award and Desai Award. So Sastry Award and Desai Award is also applicable in the present case as the concerned workman is not a temporary employee both in facts and in law and the management must confirm him in permanent service with retrospective effect and give him all monetary and other consequential benefits including PF, Gratuity and pension as well as seniority etc.

21. Ext. W-12, an Award dated 27-4-1989 in Ref. No. 61/83 which is similarly situated industrial dispute. In this case the Bank took the same stand that a temporary employee cannot be made permanent unless the established procedure of the Bank is followed by him for his permanent absorption but the stand of the workman was that as per Bank's Circular No. 247 of 1966 marked as Ext. W-3 the concerned workman of that case if considered suitable is

to be absorbed straightway in permanent cadre upon completion of 9 months of service. In that the Tribunal passed an Award that there was no established rule for confirmation only after appearing at an interview or passing it and that a temporary employee was entitled to be confirmed in service after he completed 9 months' service. However, as per Ext. W-10 which is Bank's order dated 16-8-1989 Shri Surendra Mishra was confirmed in service w.e.f. 13-12-1970 in terms of the Award though he never appeared despite the Bank repeatedly asking him to do so, in any interview for absorption in permanent service. By Ext. W-11 management also ordered for payment of contributory Provident Fund to Sri Mishra w.e.f. the date of his confirmation on 13-2-1970. In similar matter as per Ext. W-13 Hon'ble Patna High Court in CWJC No. 6763 of 1996 directed the Bank to allow the employee to appear for promotion to clerical grade on account of his confirmation in 1970. Same will also be applicable in the case of the present concerned workman. The concerned workman in the present reference had appeared thrice at interview first before he was recruited into the service of the Bank on 1-1-1979 as Sweeper-cum-Water boy. As per paragraph No. 3 of Ext. M-5 the recruitment of subordinate staff which the concerned workman was/is, was done at the branch level by an Interview Committee. The management in both their petition dated 5-10-98 and their W.S. dated 15-12-98 did not deny the averment made by the workman in paragraph-2 of their W.S. that he was appointed on 1-1-1979 after interview by the Branch Manager. The management has examined two officers on their behalf. But none of them has denied the contention of the workman in their W.S. that Sri Gupta was appointed in the Bank on 1-1-1979 after his suitability was judged at an interview held by the management of Ghatotkand Branch of the Bank. When Tribunal has ordered for reinstatement with consequential benefits and when the concerned workman was dismissed illegally by the management there is no need for fresh interview again and by this ground the management cannot refuse to regularise the concerned workman in permanent entry of the concerned workman. Moreover, when the concerned workman has appeared in the interview as per Ext. W-6 for absorption in permanent cadre then Bank has not intimated the result of the above interview. So it is really unfair to withhold the result of the interview and continue the workman as temporary. When there is dispute by the interview committee one is favourable to concerned workman for making permanent absorption and another member has drawn another view then the view which is favourable should have been followed by the management and after reinstatement in service in terms of Ext. M-2 the concerned workman was asked to appear at an interview at Ranchi Zonal Office of the Bank on 29-12-1994 vide Ext. W-7 for permanent absorption. MW-1 has also stated in his evidence that those temporary employees who are found eligible in the interview will be offered permanent job. Neither MW-1 and MW-2 deposed that Shri Gupta was found not eligible and not suitable for permanent post of Messenger in the Bank. In this regard regarding work and conduct of Sri Gupta MW-2 Chief Manager of Ghantotkand Branch in his cross-examination deposed "I am posted in the concerned branch since 15-7-2002. During my tenure in the concerned Branch

I found the conduct and work of the concerned workman satisfactory. I have not come across any document showing his work and conduct as not satisfactory or he was found to be not suitable for banking jobs in permanent capacity." It shows that the concerned workman was eligible and suitable for absorption in permanent cadre. Again a proceeding started before the ALC(C) on 1-7-1994 regarding non-confirmation of the concerned workman w.e.f. 1-10-79. Ext. W-2 shows that on 24-11-1994 the Bank sought time from the ALC(C). Finding their ground to be weak the management hurriedly asked the workman to face an interview on 29-12-94 vide Ext. W-7 and by a letter dated 29-12-1994 marked as Ext. W-3 informed the ALC(C) that the concerned workman appeared before the Interview Board and the decision of the Board was being forwarded to the appropriate authority of the Bank. Ext. W-4 shows that the view taken by the interview committee in respect of permanent appointment of Sri D.B. Gupta in the Bank's service was sent to the appropriate authority for their approval and the same was under process. Ext. W-5 which is the Bank's letter dated 19-7-1995 to the ALC(C) Hazaribagh indicated that the concerned workman had passed the interview and the said criteria as per the Bank, to be absorbed in the permanent cadre fulfilled, though the Bank has stated that Shri Gupta was not given permanent appointment in the Bank's Service. It has not been stated about the result of the interview dated 29-12-1994. It shows that the Bank adopted an unfair labour practice and biased attitude in not confirming and regularising the concerned workman in permanent cadre of the Bank. Hence the following Award is rendered:—

"The action of management of State Bank of India, Ghatotkand Branch by not confirming Sri Deo Brat Gupta w.e.f. 1-10-79 and also depriving him of becoming a member of its Provident Fund Scheme along with consequential benefits etc. is not justified. Accordingly, the concerned workman is entitled to both confirmation and Provident Fund benefit along with consequential benefits etc. w.e.f. 1-10-79."

The management is directed to implement the Award within three months from the date of its publication in the Gazette of India in the light of the observation made above.

H. M. SINGH, Presiding Officer

नई दिल्ली, 16 दिसम्बर, 2008

का.आ. 64.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़, न.-1 के पंचाट (संदर्भ संख्या 357/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-12-2008 को प्राप्त हुआ था।

[सं. एस-12012/181/2000-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 16th December, 2008

S.O. 64.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 357/2000) of Central Government Industrial Tribunal-cum-Labour Court, No-1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 16-12-2008

[No. L-12012/181/2000-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,
CHANDIGARH.**

Case I.D. No. 357/2000

Shri Jasbir Kumar S/o Shri Banarsi Dass, Vill. & PO, Sonkra,
Karnal-132001.Applicant

Versus

The Asstt. General Manager, State Bank of India, Region-III, Zonal Office, Hry. Sec.-8C, Chandigarh-160017.

....Respondent

APPEARANCES

For the workman : Sri Kamal Mor

For the management : Sri V.K. Sharma

AWARD

Passed on 20-11-08

Government of India vide notification No. L-12012/181/2000-IR-(B-I), dated 25-9-2000, referred the following industrial dispute for judicial adjudication to this Tribunal :—

“Whether the action of the management of State Bank of India in terminating the service of Shri Jasbir Kumar Peon-cum-Messenger w.e.f. 3-4-97 is justified? If not, to what relief the workman is entitled?”

The contention of the workman, in nut shell is that the workman was appointed as Peon-cum-messenger by the management on 20-2-96 by the Branch Manager, State Bank of India, Taraori, with the approval of the Regional Office at the rate of Rs. 900 per month. He worked upto 3-4-97 without any break and had completed 240 days in the preceding year from the date of his termination. From 3-4-97, without assigning any reason, without giving any notice and retrenchment compensation his services were terminated orally against the provisions of Sections 25F and 25H of the Industrial Disputes Act. On the basis of the above contention, the workman has prayed for his reinstatement into the services with full back wages along with consequential benefits.

The management of respondent opposed the contention of the workman by filing written statement. It was stated by management in its written statement that workman was engaged on 26-2-96 as casual labourer on daily wages and he worked till 2-4-97, as and when required. When the need of casual labourer was not felt by the management, his services were terminated. He was never appointed as peon-cum-messenger as alleged. He was paid Rs. 30 per day. He had not completed 240 days of work and his disengagement cannot be termed as retrenchment. There was no violation of any provisions of Industrial Disputes Act.

Both of the parties were afforded the opportunity for filing their affidavits and adducing documentary evidence, if any. The workman Shri Jasbir Kumar filed his affidavit and he was subjected to cross-examination by learned counsel for the management. The affidavit of the workman bears the same facts as enumerated in the statement of claim without any further addition. There are two affidavits filed on behalf of the management. Shri S.P. Sharma filed his affidavit on 17-4-03, whereas, Shri S.S. Wadhwan filed his affidavit on 8-5-02. Both of these witnesses Shri S.P. Sharma and Shri S.S. Wadhwan were cross-examined on 11-6-07.

No documentary evidence has been filed by the workman regarding the calculation of his work.

It is alleged by Shri S.P. Sharma that during his tenure from 1-4-96 to 10-4-96 the workman worked as the casual labourer. Shri S.S. Wadhwan has also stated that the workman was engaged for work as and when required, and he was not permanently working with the management.

On perusal of the affidavit Ex. MW2 of Shri S.S. Wadhwan it is clear that from 11-7-96 to 2-4-97, the workman had worked 218 days with the management as daily waged workers. It is the statement of Shri S.P. Sharma, another witness of management of bank that from 1-7-94 to 10-7-96 the workman had worked with him as daily waged worker for 111 days. The workman is said to be terminated from the services on 3-4-97. Thus, the preceding year work will be calculated from 3-5-96 to 2-4-97. Admittedly, from 11-7-96 to 2-4-97 workman had worked for 218 days. No doubt, no figure has been mentioned by the management from 3-5-96 to 10-7-96. If the aggregate figure is taken into consideration, the workman had certainly worked for more than 240 days in the preceding year from the date of his termination from 3-5-96 to 2-4-97. His termination from the service, under such circumstances was protected by the provisions of Industrial Disputes Act. The workman could have only been terminated by giving one month notice and retrenchment compensation which was not done by the management. The evidence of management also proved that the workman had worked continuously with the management in the preceding year from the date of his termination and not on the bases of as and when required. Hence, the termination of the workman from the services was illegal.

It is one of the contention of the management that the manager has no right to appoint a casual labour. It is a formal contention made by the management and has not been proved by the rules and regulations of the department that the manager of the branch has no power to appoint a person as casual labour. Thus, on failure of the management to prove this fact, I am of the view that the workman was validly engaged as casual labour by the manager of the bank.

There is one more contention of the management that the term of the reference is that he was appointed as peon-cum-messenger, whereas, he was never appointed on this post. In this regard, I am of the view that the Tribunal should never be technical in adjudicating the reference and there is always a scope for disposing of the reference in the context of actual facts and circumstances of the case. Accordingly, the reference referred by the Central Government shall be disposed off in light of the contentions and averments made by the parties in this regard.

Now, I have to discuss the consequences of illegal termination and relief to be provided to the workman on account of his illegal termination. There are two possible remedies available. First is reinstatement into the services, and, another is a reasonable compensation to be provided to the workman. Considering the nature of appointment of the workman the proper remedy in my opinion is an order of reasonable compensation in favour of the workman. The reasonable compensation should be based on some genuine criteria. While calculating the compensation, I am adopting the criteria which includes one month salary in lieu of one month notice, amount of retrenchment compensation at the time of his retrenchment, depreciation in money, interest on the amount and the legal expenses incurred by the workman on account of his illegal termination. After considering the above facts, I am of the view that compensation of Rs. 25,000/- will be sufficient amount to be provided to the workman on account of his illegal termination from the services. Accordingly, the management of the bank is directed to provide/deposited in the Tribunal amount of Rs. 25,000/- within one month from the publication of this award. Reference is disposed off accordingly. Central Government be informed. File be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 16 दिसम्बर, 2008

का.आ. 65.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की भारा 17 के अनुसरण में, केन्द्रीय सरकार फेडरल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण इरनाकुलम के पंचाट (संदर्भ संख्या 329/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-12-2008 को प्राप्त हुआ था।

[सं. एल-12012/216/2002-आई आर(बी-1)]
अजय कुमार, डॉक्यूमेंट अधिकारी

New Delhi, the 8th December, 2008

S.O. 65.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 329/2006) of Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the management of Federal Bank Ltd., and their workmen, received by the Central Government on 16-12-2008.

[No. L-12012/216/2002-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri P.L. Norbert, B.A. LLB., Presiding Officer
(Friday the 17th day of October 2008/25th Aswina 1930)

I. D. 329/2006

(I.D. 16/2002 of Labour Court, Ernakulam)

Union	: The General Secretary, Federal Bank Employees Union, Central Office, P.B. No. 10, Alwaye. By Adv. C. Anil Kumar.
Management	: The Chairman, Federal Bank Ltd. Head Office, Alwaye. By Adv. M/s. B.S. Krishnan Associates.

This case coming up for hearing on 15-10-2008, this Tribunal-cum-Labour Court on 17-10-2008 passed the following.

AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is :—

“Whether the punishment of dismissal imposed on Sri. Subramany R. by the management of Federal Bank Ltd., Alwaye (Kerala) is just, proper and proportionate to the misappropriation? If not, what relief is entitled by the disputant”.

2. Facts of the case in brief are as follows :—Sri R. Subramany was a cashier of Federal Bank, T. Nagar Branch, Chennai. While so, he was charge-sheeted on 19-08-1999 for misappropriation of money of a customer to the tune of Rs. 20,000/- Domestic enquiry was conducted and he was found guilty. The disciplinary authority dismissed him from service. Though an appeal was filed, he did not succeed. The workman is challenging the enquiry and the punishment through union. According to the union the enquiry was conducted in violation of the principles of natural justice. The workman was not given a reasonable opportunity to disprove the charges levelled against him.

The enquiry Officer was biased and was acting under the instructions of the management. The findings are not based on any material. The disciplinary authority without proper application of the mind concurred with the findings and imposed the punishment of dismissal. The findings are perverse and the punishment is excessive. The disciplinary authority failed to appreciate the unblemished past record of the workman. The appellate authority also did not properly appreciate the contentions of the workman. The workman is without job. He has to look after his family consisting of wife and two daughters. Hence he prays to set aside the enquiry and punishment.

3. According to the management the workman misappropriated Rs. 20,000/- entrusted by a customer of the bank for remittance into the CD account of the customer. The misappropriation came to light when the customer complained about shortage in the deposit in his account. The worker thereafter remitted the money and admitted the incident. An enquiry was conducted in full compliance with the principles of natural justice. The workman fully participated in the enquiry. He was represented by a union office bearer. Lists of witnesses and documents on management side were supplied to the workman. Copies of documents were also given to him. All the management witnesses were cross-examined. The workman was given opportunity to adduce defence evidence. It is on the basis of the evidence on record that the Enquiry Officer came to the conclusion that the workman is guilty. The workman was heard regarding findings as well as proposed punishment by the disciplinary authority. Considering the gravity of the misconduct the punishment of dismissal was imposed. The appeal filed by the workman was dismissed after carefully considering the report of the Enquiry Officer as well as the order of disciplinary authority and hearing the workman. There is no reason to interfere with the findings or punishment.

4. In the light of the above contentions the following points arise for consideration :—

1. Is the finding sustainable ?
2. Is the punishment excessive?

The evidence consists of Ext. M1 Enquiry File alone.

5. Point No. 1 :— Though validity of enquiry and sustainability of the findings are questioned in the claim statement, at the time of argument, the learned counsel for the union submitted that in view of the admission of the workman by Ext. ME-5 letter given to the Sr. Manager of the branch and in view of the fact that the workman with defence representative had participated in the enquiry throughout and cross-examined the management witnesses, he does not propose to go into the merits of the findings. I find from the records of enquiry that the Enquiry Officer had given sufficient opportunity to the workman to challenge the charges and adduce defence evidence.

Though the workman cross examined all the management witnesses he did not take the opportunity to adduce any defence evidence. He was heard by the disciplinary authority regarding findings of Enquiry Officer and thereafter he was also given opportunity to make representation regarding proposed punishment. There is ample evidence on record to enter a finding against the workman. Therefore, the findings and the enquiry proceedings are beyond challenge.

6. Point No. 2 :— The learned counsel for the union mainly argued regarding the quantum of punishment. According to the learned counsel during the entire period of 12 years of service in the bank the workman was never subjected to any disciplinary action. He is from a poor family consisting of wife and two daughters. He has no income to maintain the family. He had expressed his regret for committing a blunder of not reporting about the excess amount that was found on 30-07-1999 while closing the cash. The amount was later remitted by the workman on 16-08-1999. Hence he deserves a lenient consideration in the matter of punishment. It is seen from Ext. ME-5 letter of workman to the Sr. Manager of the Bank that he is admitting the incident expressing his regret and disclosing the pathetic situation of his family. It is also not disputed that he had been working for 12 years in the bank and he has an unblemished past record. But now he is found guilty of doing an act prejudicial to the interest of the bank falling under Clause 19.5(j) of First Bipartite Settlement and punishment is imposed under Clause 19.6 (a). But circumstances indicate that it is too harsh a punishment. The misconduct was committed on 30-07-1999. At that time the 6th Bipartite Settlement dated 14-02-1995 was in force and the punishment for gross misconduct was substituted by Clause 21 (iv) as follows :

- (a) be dismissed without notice; or
- (b) be compulsorily retired/removed from service/ discharged with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment; or
- (c) be brought down to lower stage in the scale of pay up to a maximum of two stages; or
- (d) have his increment stopped; or
- (e) have his special allowance withdrawn; or
- (f) be warned or censured, or have an adverse remark against him; or
- (g) be fined.

Considering the family circumstances of the workman and the fact that he has an unblemished past record, I feel that the ends of justice will be served by imposing the punishment of discharge with superannuation benefits and without disqualification from future employment under Clause 21(iv)(b) of 6th Bipartite Settlement dated 14-02-1995.

In the result, an award is passed confirming the findings, but altering the penalty of dismissal to discharge with superannuation benefits and without disqualification from future employment.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 17th day of October, 2008.

P. L. NORBERT, Presiding Officer

Appendix

Witness for the Union	Nil
Witness for the Management	Nil
Exhibit for the Union	Nil
Exhibit for the Management	Enquiry file.
M1-05-01-2000	

नई दिल्ली, 16 दिसम्बर, 2008

का.आ. 66.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बोर्ड मरकन्टाइल को. औं बैंक लि. प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई नं. 2 के पंचाट (संदर्भ संख्या 02/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-12-2008 को प्राप्त हुआ था।

[सं. एल-12012/188/2004-आई आर(बी-1)]

अजय कुमार डेस्क अधिकारी

New Delhi, the 16th December, 2008

S.O. 66.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2005) of Central Government Industrial Tribunal-cum-Labour Court, No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Bombay Mercantile Co-operative Bank Ltd. and their workmen, received by the Central Government on 16-12-2008.

[No. L-12012/188/2004-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT:

A. A. LAD, Presiding Officer

Reference No. CGIT-2/2 of 2005

Employers in relation to the Management of Bombay Mercantile Co-Operative Bank Ltd.

The Assistant General Manager (HRD & P)
Bombay Mercantile Co-Operative Bank Ltd.,
89, Mohammedali Road,
Mumbai -400 003.

And their workmen:

Shri Sharad Ghosalkar,
2/3, Sainath Co-operative Housing Society,
Nardas Nagar,
Opp. Nathei High School,
Bhandup (W),
Mumbai-400 078

APPEARANCES

For the Employer : Mr. B.D. Birajdar, Advocate.

For the Workmen : Ms. Priya Borgaonkar,
Advocate.

Mumbai, dated the 17th November, 2008

AWARD

1. The Government of India, Ministry of Labour, by its Order No. L-12012/188/2004 [IR (B-I)] dated 20-9-2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of Bombay Mercantile Co-operative Bank Ltd., Mumbai in terminating the services of Shri Sharad Ghosalkar w.e.f. 22-6-2003 is justified? If not, what relief Shri Sharad Ghosalkar is entitled to?”

2. In support of the subject matter referred in the reference, second party filed claim statement at Ex-6 which was replied by first party by submitting written statement at Ex-8. Then rejoinder was filed by second party at Ex-9 and matter was posted for framing of issues.

3. Meanwhile by application Ex-11, first party Bank drew attention of this Tribunal towards the jurisdiction of this Court by referring decision of Apex Court given in Bharat Co-op. Bank (Mumbai) Ltd. V/s. Co-operative Bank Employees Union published in 2007 II CLR SC page 160 where Apex Court observed that, State Government is appropriate Government and not Central Government in cases of Co-operative Banks. It was replied by the second party by filing reply at Ex-12.

4. After hearing both the parties orders were passed on the application of first party (Ex-11), disposing of the reference as not maintainable. Hence the order :

ORDER

Reference is disposed of as per orders passed on Exhibit-11.

Dated : 17-11-2008

A. A. LAD, Presiding Officer

Ex-11

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT MUMBAI

Reference No. CGIT 2/2 of 2005

BETWEEN

Bombay Mercantile Co-Operative
Bank Ltd. ... First Party

And

Shri Sharad Gajanan
Ghosalkar

... Second Party

May please this Hon'ble Tribunal :

The employer Bank herein above respectfully states as under :-

1. The employer has filed its Written statement in the above matter in the month of July, 2005.

2. The Employer Bank submits that Bombay Mercantile Co-operative Bank Ltd. is a scheduled Co-operative Bank having branches in difference states and deemed to have been registered under Multi State Co-Operative Societies Act, 2002. The issue as to whether the appropriate Government in case of Multi State Co-Operative Bank is Central Government or the State Government was raised in respect of Bharat Co-Operative Bank Ltd. by the said Bank before the Labour Court constituted under the provisions of the Act, MRTU and PULP Act, 1971 contending that the appropriate Government in respect of Bharat Co-operative Bank Ltd. is the Central Government. The issue was taken up before the Division Bench of Bombay High Court which was finally decided by the Bombay High Court that the appropriate Government in respect of Bharat Co-Operative Bank Ltd. is the State Government and not Central Government.

3. The Employer Bank is having exactly the same characteristic as of Bharat Co-operative Bank Ltd. there is virtually no difference between the two Banks as per the functioning, administrative and authorites are concerned etc. and which are covered under the Multi State Co-operative Societies Act, 2002 having branches all over India.

4. The Employer Bank submits that the Hon'ble Supreme Court before whom the judgement of the Bombay High Court in case of Bharat Co-operative Bank (Mumbai) Ltd. reported in 2005 II CLR 223 was challenged has finally decided and held by confirming the judgement of Hon'ble Bombay High Court that "the appropriate government" in so far as Multi State Co-operative Bank is concerned is the State Government. As such the Hon'ble Supreme Court has set at naught the controversy regarding the appropriate government. A copy of the judgement reported in 2007 II CLR 160 is annexed hereto and marked as Annexure 'A'.

5. It is submitted that the law laid down by the Hon'ble Supreme Court is binding on all subordinate Courts, Tribunal including the High Court and this Hon'ble Tribunal under Article 141 of Constitution of India as precedent.

6. In the circumstances, the employer Bank submits that the appropriate Government is the State Government and the reference made by the Government of India to this Hon'ble Tribunal is not maintainable and bad in law.

7. The employer submits that the issue of jurisdiction goes to the root of the another, hence the same requires to

be decided as a preliminary issue before trying and deciding other issues on merits.

8. The employer submits that in a similar matter reference No.CGIT-340 of 2004 was made by the Central Government before the Justice Ghanshyam Dass, Presiding Officer, Central Government Industrial Tribunal No. 1 at Mumbai in the matter of dispute raised by Shri Sayed Mahir Husain ex-employee of the employer Bank.

Accordingly the employer moved an application for amendment and prayed to reject the reference in view of the judgement of the Hon'ble Supreme Court. The Hon'ble Presiding Officer has passed Award on 8th June, 2007 thereby rejecting the reference, a copy of the award is annexed hereto and marked as Annexure 'B'.

9. It is therefore prayed that the Hon'ble Tribunal may be pleased to reject the reference as not maintainable. Mumbai

Dated : 23rd day of October, 2007 For Employer.
MANZAR ABBAS SAYYED, Chief Officer (Law)

Order on Ex-11 in Ref. CGIT-2/2 of 2005

1. By this application, applicant drew attention towards order of Apex Court given in Bharat Co-operative Bank (Mumbai) Ltd. V/s. Co-operative Bank Employees Union published in 2007 II CLR 160 where Apex Court observed that, Co-operative Banks having offices in more than one state does not fall under the definition of company as stipulated under Section 5 (d) of the Companies Act, 1956, and as such, governed by Rules and Regulation of Co-operative Societies Act to which State Government is appropriate Government and not Central Government.

2. This is disputed by Second party by filing reply Ex-12 mentioning that, this point is raised at very late stage. It is not tenable at present in the present form. No stand was taken in the Written Statement of this type. Said point can be decided alongwith merits of the reference.

3. Heard both. Perused the citation published in 2007 II CLR 160 and the award dated 8-6-2007 passed by CGIT-1, Mumbai in Ref.CGIT-34 of 2004. in this proceeding, the parties have filed the Statement of claim and written Statement. During the pendency of the matter, the employer, Bombay Mercantile Co-operative Bank Ltd. moved an application for amendment for raising the plea of jurisdiction. In view of the decision given by Hon'ble Supreme Court of India reported in 2007 II CLR 160 in case between Bharat Co-operative Bank Ltd. V/s. Co-operative Bank Employees Union observed that :

The Hon'ble Supreme Court (2007 II CLR 160) has ruled "The Court has no hesitation in upholding the view taken by the High Court that for the purpose of deciding as to which is the "appropriate Government" within the meaning of Section 2 (a) of the ID. Act, the

definition of the "Banking Company" will have to be read as it existed on the date of insertion of Section 2 (bb) and so read the "appropriate Government" in relation to a multi-state co-operative bank, carrying on business in more than one state, would be the State Government."

4. In this background, the appropriate government in relation to multi state Co-operative Bank carrying on business in more than one State is held to be State Government and not the Central Government. That being so, the reference made by the Central Government to this Tribunal becomes bad and the Tribunal ceases to have jurisdiction to decide the reference. The argument of the learned counsel for the workman that matter as a whole may be decided on merits including the point of jurisdiction does not appear to be acceptable on the face of it for the reason any opinion on the merits of the case would be without jurisdiction when the Tribunal ceases to have the jurisdiction to entertain the reference.

5. In view of what has been stated above, the reference is liable to be rejected. The parties are at liberty to approach the appropriate government for making proper reference, if any.

6. In view of above, I conclude that reference is not maintainable. Hence the order :

ORDER

- (i) Reference is disposed of accordingly
- (ii) Parties to approach appropriate Government for taking proper steps.
- (iii) No order as to cost.

Date : 17-11-2008

A. A. LAD, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

का.आ. 67.—ओडियोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन इंस्टिट्यूट ऑफ पल्सेस रिसर्च के प्रबंधनतंत्र के संबंद्ह नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओडियोगिक विवाद में केन्द्रीय सरकार ओडियोगिक अधिकरण/अम न्यायालय कानपुर के पंचाट (संदर्भ संख्या 19/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-2008 को प्राप्त हुआ था।

[सं. एल-42012/225/99-आई आर(डी.यू.)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O. 67.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2000) of the

Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Institute of Pulses Research and their workman, which was received by the Central Government on 17-12-2008.

[No. L-42012/225/99-IR(DU)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI R G SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHRAM BHAWAN A.T.L CAMPUS, UDYOG NAGAR, KANPUR.

Industrial Dispute No. 19 of 2000

In the matter of dispute between
Shri Shailendra Kumar Verma
C/o Sh. Rajendra Prasad Shukla
115/193, A.2 Maswanpur Rawatpur
Kanpur.

And

The Director
Indian Institute of Pulse Research
G.T. Road, Kalyanpur,
Kanpur.

AWARD

1. Central Government, MOL New Delhi, vide notification No. L-42012/225/99-IR (DU) dated 27-1-2000, has referred the following dispute for adjudication to this tribunal—

"Whether the action of the management of Indian Institute of Pulse Research, Kalyanpur, Kanpur, in terminating the employment of Shri Shailendra Kumar Verma, w.e.f. 26-8-96 is legal and justified? If not, to what relief the worker is entitled to?"

2. The case of the workman in short is that the worker has been employed to perform the work of permanent nature under the premises of the opposite party on. It is also pleaded that the workman was paid wages at the end of the month by the opposite party as approved by the Central Government, at the minimum of the rate. It is also pleaded by the workman that with a view to avoid statutory dues, the opposite party attached the workman with a licenced contractor. It has also been pleaded by the workman that he was continuing in the services from before the induction of Contractor. Workman is employee of the opposite party. Workman performed the work connected with agriculture and the attendance of the workman was used to be marked by the officers of the management. The production of the opposite party was also used to be sold out to the customers. It has also been pleaded by the workman that he rendered continuous service of 240 days of till he was

removed from the service of the opposite party w.e.f. 26-6-98 in gross violation of provisions of Industrial Disputes Act, 1947. Several fresh hands were induced by the opposite party but he was not afforded any opportunity of his reemployment. Opposite party has also violated the provisions of rules of natural and social justice by not regularising him in the service. On the basis of above it has been prayed that the workman may be reinstated in the service with full back wages, consequential benefits and seniority.

3. The opposite party has filed reply wherein it has been denied by the opposite party that there exist any relationship of employer and employee between the contesting parties. The workman never remained indirect employment of the opposite party nor the workman was ever paid wages by the opposite party directly. In fact they were the employees of the contractor who used to supervise the work of the workman. It is also denied that there exist any valid industrial dispute. Workman is not a workman as defined under I.D. Act, nor the opposite party is an industry. Management has emphatically denied having engaged the workman in the employment in any capacity whatsoever nor he was ever issued any appointment letter by the opposite party. It has also been pleaded that for giving regular and permanent employment, there is prescribed recruitment rules and no authority of the opposite party is competent to make appointment dehorning recruitment rules. Since the workman was never in the employment, question of terminating his services from any date does not arise. Moreover, provisions of I.D. Act, are also not applicable to the workman. On the basis above, it has been prayed that the claim of the workman be rejected being devoid of merit, baseless and misleading.

4. After exchange of pleadings between the parties the contesting parties adduced oral as well as documentary evidence in support of their respective cases.

5. A bare perusal of the record would go to show that in the instant case repeated dates for hearing arguments were granted by the tribunal to the representative for the workman but on each occasion on one pretext or the other he sought adjournments and avoided to conclude the case. Again further date of hearing was fixed in the case and when the case was called out representative for the workman found absent and thereafter the argument advanced by the representative for the management were heard. After the hearing was over in the case, representative for the workman appeared before the tribunal and submitted that he had sent certain representation before the Ministry seeking transfer of the case from this tribunal but a perusal of the record shows that no such application is available on the record of the case. There is also no order received from the appropriate government in this regard. Therefore, the tribunal is not inclined to believe the contention of the representative for the workman and the same stands rejected. Having considered long duration of the pendency of the instant case, the tribunal also rejected the adjournment application.

6. Tribunal has considered the arguments advanced in the case at length and have also gone carefully through the case file. It is the own case that the workman was made

the employee of the contractor and it is the contractor who used to make payment of wages. The contention of the workman to the effect that he was working much before the induction of the alleged contractor of which he is alleged to be the employee cannot be accepted by the tribunal as no documentary evidence is available on the record of the case to substantiate the claim of the workman that he was in the employment of the opposite party much before the induction of the alleged contractor.

7. The arguments of the opposite party appears to be sound that there exist no relationship of master and servant between them and the so called workman, therefore, there appears no valid industrial dispute between the contesting parties. In the absence any cogent evidence in support of the claim of the workman, it is concluded that there never existed any relationship of master and servant between the parties and therefore, the alleged workman cannot be held to be a workman within the definition of the workman as given under the Act. If it is so test issues becomes infructuous as raised by the alleged workman in his statement of claim and therefore need no consideration.

8. In the end it is concluded for the foregoing that the instant case is not a valid industrial dispute as the claimant has palpably failed to establish that he ever remained in active employment of the opposite party or that he was ever issued any appointment letter, or he was ever paid his wages by the opposite party or his services have ever been terminated by the opposite party. Therefore, question of breach of provisions of the I.D. Act, 1947, by opposite party does not arise.

9. For the reasons discussed above, it is held that since instant case is not valid industrial dispute between the parties, alleged claimant cannot be held to be entitled for any relief as claimed by him. Reference is therefore, answered accordingly against the claimant and in favour of the opposite party.

R.G. SHUKLA, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

का.आ. 68.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन इंस्टिट्यूट ऑफ पल्सेस रिसर्च के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 9/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-2008 को प्राप्त हुआ था।

[सं. एल-42012/227/99-आई आर(डी य.)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O. 68.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the Award (Ref. No. 9/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Institute of Pulses Research and their workman, which was received by the Central Government on 17-12-2008.

[No. L-42012/227/99-IR (DU)]
AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI R. G. SHUKLA PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT SHRAM
BHAWAN, A.T.I. CAMPUS, UDYOGNAGAR, KANPUR**

Industrial Dispute No. 9 of 2002

In the matter of dispute between

Shri Subhash Chandra,
C/o Sh. Rajendra Prasad Shukla
115/193, A-2, Maswanpur Rawatpur,
Kanpur.

And

The Director,
Indian Institute of Pulse Research
G.T. Road, Kalyanpur,
Kanpur.

AWARD

1. Central Government, MOL New Delhi, vide notification [No. L-42012/227/99-IR (DU)] dated 27-1-2000 has referred the following dispute for adjudication to this tribunal—

“Whether the action of the management of Indian Institute of Pulse Research, Kalyanpur, Kanpur, in terminating the employment of Shri Subhash Chandra, w.e.f. 26-6-98 legal and justified? If not, to what relief the worker is entitled to?”

2. The case of the workman in short is that the worker has been employed to perform the work of permanent nature under the premises of the opposite party on..... It is also pleaded that the workman was paid wages at the end of the month by the opposite party as approved by the Central Government, at the minimum of the rate. It is also pleaded by the workman that with a view to avoid statutory dues, the opposite party attached the workman with a licence contractor. It has also been pleaded by the workman that he was continuing in the services from before the induction of Contractor. Workman is employee of the opposite party. Workman performed the work connected with agriculture and the attendance of the workman was used to be marked by the officers of the managements. The production of the opposite party was also used to be sold out to the

customers. It has been pleaded by the workman that he rendered continuous service of 240 days till he was removed from the service of the opposite party w.e.f. 26-6-98 in gross violation of provisions of Industrial Disputes Act, 1947. Several fresh hands were induced by the opposite party but he was not afforded any opportunity of his reemployment. Opposite party has also violated the provisions of rules of natural and social justice by not regularising him in the service. On the basis of above it has been prayed that the workman may be reinstated in the service with full back wages, consequential benefits and seniority.

3. The opposite party has filed reply wherein it has been denied by the opposite party that there exist any relationship of employer and employee between the contesting parties. The workman never remained in direct employment of the opposite party nor the workman was ever paid wages by the opposite party directly. In fact they were the employees of the contractor who used to supervise the work of the workman. It is also denied that there exist any valid industrial dispute. Workman is not a workman as defined under I.D. Act, nor the opposite party is an industry. Management has emphatically denied having engaged the workman in the employment in any capacity what so ever nor he was ever issued any appointment letter by the opposite party. It has also been pleaded that for giving regular and permanent employment, there is prescribed recruitment rules and no authority of the opposite party is competent to make appointment dehorng recruitment rules. Since the workman was never in the employment, question of terminating his services from any date does not arise. Moreover, provisions of I.D. Act, are also not applicable to the workman. On the basis of above, it has been prayed that the claim of the workman be rejected being devoid of merit, baseless and misleading.

4. After exchange of pleadings between the parties the contesting parties adduced oral as well as documentary evidence in support of their respective cases.

5. A bare perusal of the record would go to show that in the instant case repeated dates for hearing arguments were granted by the tribunal to the representative for the workman but on each occasion on one pretext or the other he sought adjournments and avoided to conclude the case. Again further date of hearing was fixed in the case and when the case was called out representative for the workman found absent and thereafter the arguments advanced by the representative for the management were heard. After the hearing was over in the case, representative for the workman appeared before the tribunal and submitted that he had sent certain representation before the Ministry seeking transfer of the case from this tribunal but a perusal of the record shows that no such application is available on the record of the case. There is also no order received from the appropriate Government in this regard. Therefore,

the tribunal is not inclined to believe the contention of the representative for the workman and the same stands rejected. Having considered long duration of the pendency of the instant case, the tribunal also rejected the adjournment application.

6. Tribunal has considered the arguments advanced in the case at length and have also gone carefully through the case file. It is the own case that the workman was made the employee of the contractor and it is the contractor who used to make payment of wages. The contention of the workman to the effect that he was working much before the induction of the alleged contractor of which he is alleged to be the employee cannot be accepted by the tribunal as no documentary evidence is available on the record of the case to substantiate the claim of the workman that he was in the employment of the opposite party much before the induction of the alleged contractor.

7. The arguments of the opposite party appears to be sound that there exist no relationship of master and servant between them and the so called workman, therefore, there appears no valid industrial dispute between the contesting parties. In the absence any cogent evidence in support of the claim of the workman, it is concluded that the never existed any relationship of master and servant between the parties and therefore, the alleged workman cannot be held to be a workman within the definition of the workman as given under the Act. If it is so rest issues becomes infructuous as raised by the alleged workman in his statement of claim and therefore, need no consideration.

8. In the end it is concluded for the foregoing that the instant case is not a valid industrial dispute as the claimant has palpably failed to establish that he ever remained in active employment of the opposite party or that he was ever issued any appointment letter, or he was ever paid his wages by the opposite party or his services have ever been terminated by the opposite party. Therefore, question of breach of provisions of the I.D. Act, 1947, by the opposite party does not arise.

9. For the reasons discussed above, it is held that since instant case is not a valid industrial dispute between the parties, alleged claimant cannot be held to be entitled for any relief as claimed by him. Reference is therefore, answered accordingly against the claimant and in favour of the opposite party.

R.G. SHUKLA, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

का.आ. 69.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ईंस्ट्र्यूट ऑफ पल्सेस रिसर्च के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कानपुर के पंचाट (संदर्भ

संख्या 102/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-08 को प्राप्त हुआ था।

[सं. एल-42012/114/2000-आई आर(डीयू)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O. 69.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.102/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Management of Indian Institute of Pulses Research, and their workmen, which was received by the Central Government on 17-12-08.

[No. L-42012/114/2000-IR (DU)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE SHRI R.G SHUKLA PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHRAM BHAWAN
A.T.I. CAMPUS, UDYOG NAGAR, KANPUR

Industrial Dispute No. 102 of 2000

In the matter of dispute between

Shri Vinod Kumar Singh
C/o Shri Rajendra Prasad Shukla
115/193 A.2 Maswanpur Rawatpur
Kanpur.

AND

The Director
Indian Institute of Pulse Research
G.T. Road, Kalyanpur, Kanpur.

AWARD

1. Central Government, MOL, New Delhi, vide notification No. L-42012/114/2000-IR(UD) dated 29-8-2000 has referred the following dispute for adjudication to this Tribunal.

“Whether the action of the management of India, Institute of Pulse Research, Kalyanpur, Kanpur, in terminating the employment of Sri Vinod Kumar Singh w.e.f. 26-8-98 legal and justified? If not to what relief the worker is entitled to ?”

2. The case of the workman in short is that the worker has been employed to perform the work of permanent nature under the premises of the opposite party on. It is also pleaded that the workman was paid wages at the end of the month by the opposite party as approved by the Central Government, at the minimum of the rate. It is also pleaded by the workman that with a view to avoid statutory dues, the opposite party attached the workman with a licenced contractor. It has also been pleaded by the workman that he was continuing in the services from before the induction

of Contractor. Workman is employee of the opposite party. Workman performed the work connected with agriculture and the attendance of the workman was used to be marked by the officers of the managements.

The production of the opposite party was also used to be sold out to the customers. It has also been pleaded by the workman that he rendered continuous service of 240 days of till he was removed from the service of the opposite party w.e.f. 26-8-98 in gross violation of provisions of Industrial Dispute Act, 1947. Several fresh hands were induced by the opposite party but he was not afforded any opportunity of his reemployment. Opposite party has also violated the provisions of rules of natural and social justice by not regularising him in the service. On the basis of above it has been prayed that the workman may be reinstated in the service with full back wages, consequential benefits and seniority.

3. The opposite party has filed reply wherein it has been denied by the opposite party that there exist any relationship of employer and employee between the contesting parties. The workman ever remained in direct employment of the opposite party nor the workman was ever paid by the opposite party directly. In fact they were the employees of the contractor who used to supervise the work of the workman. It is also denied that the exist any valid industrial dispute. Workman is not a workman as defined under I.D. Act, nor the opposite party is an industry. Management has emphatically denied having engaged the workman in the employment in any capacity whatsoever nor he was ever issued any appointment letter by the opposite party. It has also been pleaded that for giving regular and permanent employment, there is prescribed recruitment rules and no authority of the opposite party is competent to make appointment dehorng recruitment rules. Since the workman was never in the employment, question of terminating his services from any date does not arise. Moreover, provisions of Industrial Dispute Act are also not applicable to the workman. On the basis of above, it has been prayed that the claim of the workman be rejected being devoid of merit, baseless and misleading.

4. After exchange of pleadings between the parties the contesting parties adduced oral as well as documentary evidence in support of their respective cases.

5. A bare perusal of the record would go to show that in the instant case repeated dates for hearing arguments were granted by the tribunal to the representative for the workman but on each occasion on one pretext or the other he sought adjournments and avoided to conclude the case. Again further date of hearing was fixed in the case and when the case was called out representative for the workman found absent and thereafter the arguments advanced by the representative for the management were heard. After the hearing was over in the case, representative for the

workman appeared before the tribunal and submitted that he had sent certain representation before the Ministry seeking transfer of the case from this tribunal but a perusal of the record shows that no such application is available on the record of the case. There is also no order received from the appropriate government in this regard. Therefore, the tribunal is not inclined to believe the contention of the representative for the workman and the same stands rejected. Having considered long duration of the pendency of the instant case, the tribunal also rejected the adjournment application.

6. Tribunal has considered the arguments advanced in the case at length and have also gone carefully through the case file. It is the own case that the workman was made the employee of the contractor and it is the contractor who used to make payment of wages. The contention of the workman to the effect that he was working much before the induction of the alleged contractor of which he is alleged to be the employee cannot be accepted by the tribunal as no documentary evidence is available on the record of the case to substantiate the claim of the workman that he was in the employment of the opposite party much before the induction of the alleged contractor.

7. The arguments of the opposite party appears to be sound that there exist no relationship of master and servant between them and the so called workman, therefore, there appears no valid industrial dispute between the contesting parties. In the absence any cogent evidence in support of the claim of the workman, it is concluded that there never existed any relationship of master and servant between the parties and therefore, the alleged workman cannot be held to be a workman within the definition of the workman as given under the Act. If it is so rest issues becomes infructuous as raised by the alleged workman in his statement of claim and therefore, need no consideration.

8. In the end it is concluded for the foregoing that the instant case is not a valid industrial dispute as the claimant has palpably failed to establish that he ever remained in active employment of the opposite party or that he was ever issued any appointment letter, or he was ever paid his wages by the opposite party or his services have ever been terminated by the opposite party. Therefore, question of breach of provisions of the Industrial Disputes Act, 1947, by the opposite party does not arise.

9. For the reasons discussed above, it is held that since instant case is not a valid industrial dispute between the parties, alleged claimant cannot be held to be entitled for any relief as claimed by him. Reference is therefore, answered accordingly against the claimant and in favour of the opposite party.

नई दिल्ली, 17 दिसम्बर, 2008

का.आ 70.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आर्कलॉजिकल सर्वे ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण / श्रम न्यायालय कानपुर के पंचाट (संदर्भ संख्या 43/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-08 को प्राप्त हुआ था।

[सं. एल-42012/305/99-आई आर (डी यू)]
अजय कुमार, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O. 70.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.43/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Archaeological Survey of India and their workmen, which was received by the Central Government on 17-12-08.

[No. L-42012/305/99-IR(DU)]

AJAY KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI R. G. SHUKLA PRESIDING
OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL- CUM-LABOUR
COURT SHRAM BHAWAN A.T.I. CAMPUS,
UDYOG NAGAR, KANPUR.**

Industrial Dispute No. 43 of 2000.

BETWEEN

Makhan Singh Son of Ram Raj Singh, C/o Keshpal Singh,
43/305/18 New Abadi, Sikandara, Agra.

AND

Superintending Archaeologist,
Archaeological Survey of India,
Ballie Guard Cottage,
Golaganj, Lucknow.

AWARD

1. Central Government, MOL, New Delhi, vide notification No. L-42012/305/99-IR(DU) dated 3-3-2000 has referred the following dispute for adjudication.

Whether the action of the management of Archaeological Survey of India Lucknow in terminating the services of Makhan Singh with effect from October, 1998, is justified? If not to what relief the workman is entitled?

2. Case in short as set up by the workman in his statement of claim that he was engaged by the opposite

party in the year 1991 as daily rated casual employee and worked continuously up to October 1998, when the services of the workman were terminated by the opposite party in gross violation of the provisions of Section 25F of Industrial Disputes Act, 1947, in as much as no notice, notice pay or retrenchment compensation had been provided to the workman at the time of dispensation of his service. Several junior to the workman are still in the employment of the opposite party and are working at different places. On the basis of above it has been prayed by the workman that he be reinstated in the service of the opposite party with full back wages and all consequential benefits.

3. The claim of the workman has been refuted by the opposite party on the ground that the workman never remained in their continuous employment during the period 1991 to 1998. It is also pleaded that occasionally the workman was engaged on estimated budget approved for executing temporary work. It has also been denied by the opposite party that they ever violated any of the provisions of the Act in the case of the workman. It has also been denied by the opposite party that the workman had ever completed 240 days of continuous job, therefore, applicability of the provisions section 25F of the Act does not arise at all. It is also alleged by the opposite party that the claim of the workman is devoid of merit and is liable to be rejected.

4. After exchange of pleadings between the parties, the workman examined himself as W.W.1 in support of his claim.

5. Having heard the arguments of the contesting parties at length and also considering the settled legal position, the tribunal is of the opinion that the workman cannot be granted the relief as claimed by him. It is the own case of the workman that he was engaged as daily rated casual worker by the opposite party. There cannot be any dispute on the point that labour adjudication process should not be used as a measure of providing employment through back door entry as the same would attract the provisions of Article 14 which guarantees equality in public employment to the citizen of the country. An ad-hoc, temporary or daily rated employee has no right to claim employment without undergoing through selection process. It is not the case of the workman that he ever entered into regular selection process or he was ever issued any appointment letter by the opposite party. When the workman never remained in the active employment of the opposite party and when he had not been issued any letter terminating his services by the opposite party, the present case totally appears to be outside the ambit and scope of term Retrenchment as defined under the Act. Therefore, having concluded that it is not a case of retrenchment of the workman, provisions of the Act cannot be made applicable in the case of the workman.

6. In view of what has been discussed above, it is held that the claim of the workman is liable to be rejected

being devoid of merit. Accordingly it is rejected and it is held that the workman is not entitled for any relief as claimed by him in claim petition.

7. Reference is answered accordingly against the workman and in favour of the opposite party.

R.G SHUKLA, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

का.आ 71.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आकॉलाइजिकल सर्वे ऑफ इंडिया के प्रबंधात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 9/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-12-2008 को प्राप्त हुआ था।

[सं. एल-42012/119/2004-आई आर (सी एम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O. 71.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.9/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (U.P.) as shown in the Annexure, in the Industrial Dispute between the management of Archaeological Survey of India and their workmen, received by the Central Government on 17-12-2008.

[No. L-42012/119/2004-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE SHRI R.G. SHUKLA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHRAM BHAWAN, A.T.I. CAMPUS, GOVIND NAGAR, KANPUR

Industrial Dispute No. 09 of 2005

BETWEEN

Dy. Superintending Horticulturist
Archaeological Survey of India
Taj Mahal, Agra.

AND

Suresh Chandra
S/o Late Sobaran Singh
R/o 43/274 Jain Gali
Sikandara, Agra.

AWARD

1. Central Government, MOL, New Delhi, vide notification No. L-42012/119/2004-IR(CM-II) dated 31-03-2005 has referred the following dispute for adjudication to this tribunal —

2. Whether the action of the management of Archaeological Survey of India, in not considering the request of Sri Suresh Chandra son of late Sobaran Singh for appointment on compassionate ground is legal and justified? If not to what relief, the applicant is entitled?

3. Case in short as set up by the claimant is that his father died in harness on 12-04-99 while working under the opposite party. It is also alleged that the mother of the claimant expired prior to the death of his father and that he is having two younger sisters aged about 17 and 12 years respectively, including one younger brother. It is also the case of the claimant that the claimant constantly making demand before the opposite party to provide him employment on compassionate grounds but his request was turned down by the opposite party vide their communication dated 04-05-2001 and 25-09-01, on the ground of reserve quota. It is the further case of the claimant that the opposite party in the year 2000 inducted 46 garden attendants through direct recruitment, in the year 2004 the opposite party appointed 35 attendants and in the year 2005 appointed 10 garden attendants through direct recruitment, still the opposite party did not provide employment to the claimant under reserved quota of 5% as compassionate appointment. It is also the case of the claimant that several persons were given appointments under compassionate employment quota therefore provisions of first come last go has been badly flouted by the opposite party. Lastly it has been claimed that the action of the opposite party is discriminatory and the opposite party be directed to provide applicant appointment on compassionate ground.

4. The opposite party contested the claim of the applicant on a number of grounds interalia; that the present claim is not an industrial dispute within the meaning of Section 2(k) of the Act; that the present claim is bad for non joinder of necessary party; the claimant is not a workman under Section 2(s) of the Act; the claimant cannot be held for wages as he was never appointed under the opposite party nor he ever performed any work of either nature regular or permanent.

5. On merit it has been admitted by the opposite party that Sobaran Singh was a regular and permanent employee of the opposite party and as per their record he expired on 12-04-99, it is the further case of opposite party that compassionate appointment is made against vacancy i.e. 5% of vacant post reserved for compassionate appointment for a particular year and that reserve vacancy was filled up in that year. However the application of the claimant was sent to the competent authority vide letter No. 9/13/99-H.D.1.620 dated 30-11-2000, a copy of which has been filed and marked as Annexure I to the reply of the opposite party document No. 7/30 available on the record of the file. The competent authority has taken decision on the application of the claimant vide communication dated

18-12-2000 a copy of the same was also sent to the claimant. It has been denied by the opposite party that they ever had made any appointment against direct recruitment post and only persons working with temporary status were made regular and permanent under Group "D" post. The opposite party has admitted the fact that they have inducted persons under direct recruitment process in group D in the year 2004 and 2005. The opposite party in their reply has further admitted the fact that they made appointment on compassionate ground through the competent authority and has further pleaded that while extending appointment on compassionate ground there was no violation of rules or principle of last come first go and lastly it has been denied by the opposite party that the claimant has either any right or claim for seeking appointment on compassionate grounds. Therefore, the claim of the applicant is liable to be rejected being devoid of merit.

6. After exchange of pleadings between the parties both contesting parties have led oral as well as documentary evidence in support of their respective claims.

7. I have heard the learned representative for the parties at length and have also gone carefully through the records and materials available thereon.

8. In support of his claim Sri Suresh Chandra has examined himself as workman witness W.W.1. The witness has stated in his evidence that his father expired on 12-04-99, and that Sri Chuuni Lal, Jyoti Prasad and Chedi Kushwaha who were working as Garden attendant died after the death of his father. Sri Anand Kushwaha son of Late Chedi Kushwaha, Sri Ajai son of late Chunni Lal and lastly Sri Raj Kumar son of late Jyoti Prasad were given appointment by the opposite party on compassionate ground by the opposite party.

9. In his corss-examination the witness has expressed his ignorance as to in which year he had applied for compassionate appointment before the opposite party. He further expressed his ignorance about that fact that in the year when he applied for compassionate appointment whether or not quota for 5% appointment on compassionate grounds was completed or not. Witness has also admitted the fact the application for compassionate appointment given by him was sent to the Director General of the opposite party and copy of decision thereon was provided to him by the opposite party. Witness has admitted the fact that in the year 2000 only such candidate were appointed by the opposite party who were having temporary status. The witness goes on to state that in the year 2004 and 2005 persons were given direct recruitment by the opposite party without considering compassionate appointment.

10. On behalf of the management opposite party Sri R. R. P. Sinha appeared as M.W.1 before the tribunal who in his examination in chief has admitted the fact that the claimant has submitted his application form for appointment

on compassionate appointment on 19-05-2000. Witness has clarified the position that in the year 2000, quota for compassionate appointment has already been filled and process was completed. The application of the claimant was forwarded to the Director General, New Delhi, and the decision thereon was received on 18-12-2000, a copy of which has already been forwarded to the claimant. Witness has also admitted the fact that there are certain direction/instruction against compassionate appointment which has not been filed on the record of the case before the tribunal. Witness has also admitted the fact that in the year 2004 and 2005 recruitment were made in his department on the basis of direct recruitment process and that on the basis of 5% quota for compassionate appointment no appointment was made in the department.

11. Management witness in his cross examination has clearly admitted the fact that the father of the claimant died in the year 1999. Sri Chedi Kushwaha died in the year 2000. Sri Anand son of Chedi Kushwaha was given appointment in the year 2003 on compassionate ground. Witness goes on to admit the fact that Jyoti Prasad died in the year 2003 and the son of Jyoti Prasad by name Raj Kumar was given compassionate appointment in the year 2003 and likewise the witness goes on to admit the fact Sri Chunni Lal expired in the year 2002 and compassionate to his son by name Ajai was given in the year 2003. Witness has also admitted the fact that Chunni Lal expired in the year 2002 and that his son was given appointment in the year 2003. Witness has expressed his ignorance that in the year what number of chowkidars were appointed in the garden. Witness goes on the admit the fact in his cross examination that opposite party has appointed about 35 garden attendants through direct recruitment in the year 2005, but according to departmental rules he cannot say as to how many persons were appointed under compassionate appointment. Witness has also expressed his ignorance about the fact as to why the workman could not be given appointment under 5% quota reserved for compassionate appointment.

12. It has been argued by the representative for the workman that workman should have been given appointment on compassionate grounds against 5% post reserved for providing employment on compassionate grounds to the dependants of employees died in harness. It has also been argued by the representative for the workman that dependants of such employees have already been provided employment by the opposite party who had died after the death of the father of the workman but the claim of the workman was not considered by the opposite party. Pin pointed attention of the tribunal was also invited to the documents number 18/2 to 18/6 which are applications submitted by the dependants of the employees died in harness seeking compassionate appointment from the opposite party. Suresh Chandra present claimant had given application on 19-05-2000 (document No. 18/2) for

providing compassionate appointment, Smt. Tetari Devi widow of late Chhedi Lal had given application on 12-10-2001 (document No. 18/3), Sri Ajai son of late Chunni Lal had given his application on 26-05-2000 and Smt. Anar Devi widow of late Jyoti Prasad had given her application on 18th August, 2001 and all of them except the concerned workman have been provided employment on compassionate grounds.

13. The representative for the management could not meet out the submissions of the representative for the workman nor he could explain the reasons as to why the concerned workman was not provided employment on compassionate grounds specially when he applied on 19-05-2000 and dependants of the employees died in harness moved their application much after the application of the workman have been given appointments on compassionate ground. Therefore, from the evidence oral as well as documentary it stands established that the workman has been able to establish his claim for appointment on compassionate grounds. Under these circumstances, the Tribunal has no hesitation in holding that the claim of the workman is liable to be allowed and accordingly, it is allowed.

14. The action of the opposite party in denying employment to the workman on compassionate ground is discriminatory and, therefore, cannot be sustained in the eye of law.

15. In view of above discussions it is held that the action of the management opposite party is neither fair nor just and is discriminatory. The workman, therefore, is held entitled for compassionate appointment. Management is, therefore, directed to provide employment to the workman on compassionate ground within a period of thirty days from the date of publication of the award.

16. Reference is answered accordingly, in favour of the workman and against the opposite party management.

R.G. SHUKLA, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

का.आ. 72.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान कॉर्पर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम व्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/341/99) को ग्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-08 को प्राप्त हुआ था।

[सं. एल-43012/11/1999-आई आर(एम.)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O. 72.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award (Ref. No.CGIT/LC/R/341/99) of the Central Government Industrial Tribunal/ Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Hindustan Copper Ltd., and their workman, which was received by the Central Government on 15-12-2008.

[No. L-43012/11/1999-IR (M)]

KAMAL BAKHNU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/341/99

Presiding Officer : Shri C.M. Singh

The General Secretary,
Copper Mines Workers' Union,
P.O. Malanjkhand, Balaghat

—Workman/Union

Versus

The Executive Director,
Malanjkhand Copper Project of
Hindustan Copper Limited,
P.O. Malanjkhand, Balaghat

—Management

AWARD

Passed on this 23rd day of October, 2008

1. The Government of India, Ministry of Labour vide its Notification No.L-43012/11/99-IR (M) dated 17-19/11-1999 has referred the following dispute for adjudication by this Tribunal :—

"Whether the action of Hindustan Copper Ltd., Distt. Balaghat, in terminating the services of Shri Balwan Singh Malik S/o Moujiram Malik, Security Guard Gr. I, Code No. 1147 w.e.f. 31-10-98 is justified. If not, to what relief the workman is entitled?"

2. The case of the deceased workman Shri Balwan Singh Malik in brief is as follows : That he was employee of Malanjkhand Copper project and was a member of Copper Mines Workers, Union known as INTUC. He was initially appointed as Security Guard on 16-2-1981. On 5-4-96, late Balwan Singh while was on duty from 1 PM to 9PM at the entrance gate of Malanjkhand Copper Project, he received a telephonic call from his wife at about 1.30 PM which was attended by Shri R.C. Pandey, Security Supervisor, who then informed Shri Balwan Singh to attend the said telephone call. He attended the call, his wife informed that one Shri Makhanlal Sharma, Security Guard had consumed heavy liquor and alongwith his wife Smt. Koshalya Devi has badly abused her in filthy language and beaten her in front of Project Quarter No. NB/46. The deceased workman

having received the information informed Shri Bhola Dutt Bhatt, Assistant Security Inspector and requested him to permit to attend his home. That Shri Bhola Dutt Bhatt refused his request and ordered him to first attend and go to 45 Ton Magazine Site and drop the security guards coming from shift change. The workman while complying the orders of Assistant Security Inspector dropped the security guards at 45 Ton Magazine site on the jeep and returned to Main Entrance Gate at about 2.20 PM and reported the Assistant Security Inspector. The workman again requested the Assistant Security Inspector to relieve him for few hours for attending his home but the Assistant Security Inspector again turned down his request and directed him to go to bungalow of the Assistant General Manager (Personnel) Shri R.K. Singh who had gone for lunch to his home and drop him at office site. When the workman was on the way and was going to bungalow of Assistant General Manager (Personnel), he took a chance to enquire about the incident from his wife since the house of the workman was on the way to the Assistant General Manager's residence. That after parking the jeep, when the applicant was enquiring with his wife regarding the phone call and mishappening, at that moment surprisingly and suddenly Shri Makhan Lal Sharma who had consumed liquor and was in drunken condition, along with his wife came out and started abusing and gave lathi blows on the shoulder and hands of the workman and his wife. After the incident, both the parties lodged complaint with Malanjkhand Police Station. But Shri Makhan Lal Sharma managed to get his complaint registered and instead of registering complaint of the workman, the police station Malanjkhand registered a case against him under Sec. 394, 323 and 325 of the IPC. That the workman was sent to MLC for medical check-up under the provisions of IPC. That after the said incident, the workman was placed under suspension vide order dated 9-4-96. A Departmental Enquiry was also conducted against the workman regarding the incident. The Hon'ble High Court after hearing the case, stayed the proceedings of departmental enquiry for a period of 4 months and directed that if within four months criminal trial is not concluded, the employer would be free to proceed with the Departmental Enquiry. The criminal case against workman before the Judicial Magistrate First Class Baihar was duly compromised and he was acquitted of the charges levelled against him. But the Departmental Enquiry remained in progress and was concluded by the department. The Enquiry Officer was biased and conducted the enquiry without any procedure in violation of principles of natural justice. The findings of the Enquiry Officer are perverse, bad and biased. The findings of Enquiry Officer are bad, illegal and perverse and liable to be vitiated and the order which is passed on the basis of enquiry is liable to be set aside holding it bad and illegal and in this manner the action of the management of terminating the services of the workman is unjustified and illegal.

3. The case of the management in brief is as follows: That in relation to an incident on 5-4-96 when the workman was on duty in the 2nd shift from 1 PM to 9 PM, he was

allotted the duty of driver. He was instructed to drive the jeep to township and bring Assistant General Manager (Personnel) from his residence to Administrative Building. That the workman took the jeep but instead of going to the township he unauthorisedly took the jeep to new barrack No. NB 44 and started abusing one Makhan Lal, Security Guard I and his wife. On that date the workman did not return to his duty. He was served with a chargesheet on 18-4-96 for the same. A Departmental Enquiry was conducted into the act of misconduct committed by the workman legally and properly. The Enquiry Officer submitted his report on 23-7-98 and on 31-10-98, the Disciplinary Authority passed the order of termination of workman's services. The workman was given full opportunity to defend his case. The Departmental Enquiry was conducted in a perfect and legal manner. The workman has no case.

4. Heard Shri S. Pandey, Advocate/counsel for the legal heir of the deceased workman and Miss Aparna Singh, Advocate for the management. Vide application No. 8, widow of the deceased workman Shri Balwan Singh Malick has prayed to pass no dispute award in the present case. The learned counsel for the management has no objection to the aforesaid application. She made an endorsement of "No Objection" on application No. 8.

5. In view of the above, 'no dispute' award is passed in this case without any orders as to costs.

6. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

C. M. SINGH, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

S.O. 73.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. एन. सण्डर्सन एंड कंपनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/98/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-08 को प्राप्त हुआ था।

[म. एल-29012/24/1991-आई आर(एम)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O. 73.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/98/91) of the Central Government Industrial Tribunal/ Labour Court, Jabalpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of S.N. Sunderson & Co. and their

workman, which was received by the Central Government on 15-12-08.

[No. 29012/24/1991-IR(M)]

KAMAL BAKHNU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/98/91

Presiding Officer : Shri C. M. Singh

Shri Bansh Gopal Dubey,
Gram: Badari, Post : Nanhawarakala,
Thana : Kymore,
Teh : Vijayraghawagarh,
Distt. Jabalpur (MP)

Workman/Union

Versus

The Manager,
S.N. Sunderson and Company,
Kahangaon-via-Kymore,
Distt. Jabalpur (MP) Management

AWARD

Passed on this 23rd day of October, 2008

1. The Government of India, Ministry of Labour vide its Notification No. L-29012/24/91-IR(Vividh) dated 1-2/5/91 has referred the following dispute for adjudication by this tribunal :—

“क्या प्रबंधतंत्र एस. एन. सण्डर्सन एंड कंपनी काहनगांव व्हाय: कैमोर जिला जबलपुर म.प्र. के प्रबंधकों द्वारा श्री बंशगोपाल दुबे, एक्स कम्प्रेसर द्वायवर की सेवाएं दिनांक 31-12-86 से समाप्त किए जाने की कार्यवाही न्यायोचित है? यदि नहीं, तो संबंधित कर्मकार किसी अनुतोष का हकदार है?”

2. The case of workman Shri Bansh Gopal Dubey in brief is as follows. That he was appointed in the month of September 1982 on daily wages and was required to record the attendance of labourers working in the mines and forward the same to the office of the management. That the workman performed his work without any break in service till 26th of December, 1982 and his services were made permanent and was required to work as Compressor Operator on a monthly salary of Rs. 500 per month. His duties were at Badri Mines. The workman continued to do his above duties till 31st day of December, 1986 when he was terminated from the services. The workman worked continuously for more than 240 days. The denial of giving him work amounts to retrenchment. The failure on the part of management to comply with the provisions of Sec-25-F makes his termination void-ab-initio and he is entitled to be reinstated with full back wages.

3. The case of management in brief is as follows. That the grandfather of the workman Shri B.G. Dubey

was earlier employed with S.N. Sunderson and Company for long period and expired long ago. He was a sincere employee. Therefore the management was having a soft corner towards him. The workman being grand son of a deceased sincere employee approached the Mines Manager at Badri Lime Stone Mines owned by M/s. Sunderson & Co. The workman requested to Mines Manager to issue an Experience Character Certificate for the relevant period for the purpose of getting employment through Employment Exchange. The request of the workman was only for getting his name registered in Employment Exchange and Mr. Balram Singh, Mines Manager at the relevant time of Badri Limestone Mines, in good faith issued the said experience/character certificate keeping in view the services rendered by his grandfather. The management company has never authorized the Mines Manager to issue such a certificate. It appears that the workman has raised the dispute with the said Experience Certificate and on the basis thereof, he is claiming the present relief. It is pleaded that the applicant was not a workman of the management and therefore the question of his termination and reinstatement does not arise.

4. Order dated 1-5-08 on the ordersheet of this proceeding reveals that though the workman filed his affidavit in support of his case but he failed to appear before this Tribunal for being cross examined by the management and therefore it was ordered that his affidavit shall not be read in evidence. The ordersheet further reveals that thereafter the workman never appeared on any date. The ordersheet dated 17-6-08 further reveals that Shri P.K. Saraswat, Advocate for the management submitted that the management does not want to adduce any evidence and in this manner, the evidence of parties was closed.

5. I have heard Shri P.K. Saraswat, Advocate for the management and perused the record.

6. It is a no evidence case. Therefore the reference deserves to be decided in favour of management and against the workman without any orders as to costs.

7. In view of the above, the reference is decided in favour of the management and against the workman without any orders as to costs holding the following—

“प्रबंधतंत्र एस. एन. सण्डर्सन एंड कंपनी काहनगांव व्हाय: कैमोर जिला जबलपुर म.प्र. के प्रबंधकों द्वारा श्री बंशगोपाल दुबे, एक्स कम्प्रेसर द्वायवर की सेवाएं दिनांक 31-12-86 से समाप्त किए जाने की कार्यवाही न्यायोचित है? अतः संबंधित कर्मकार किसी अनुतोष का हकदार नहीं है?”

C. M. SINGH, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

का.आ 74.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एल आई सी ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं.-1, मुम्बई के पंचाट (संदर्भ संख्या सी जी आई टी-13/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-2008 को प्राप्त हुआ था।

[सं. एल-17012/22/2006-आई आर (एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O. 74.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT-13/2007) of the Central Government Industrial Tribunal-cum-Labour Court, No-1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workmen, which was received by the Central Government on 15-12-2008.

[No. L-17012/22/2006-IR (M)]

KAMAL BAKHNU, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

Justice C.P. Mishra, Presiding Officer

Reference No. CGIT 13 of 2007

Parties : Employers in relation to the management of Life Insurance Corporation

AND

Their workmen,

APPEARANCES

For the Management : Absent

For the workman : Absent

State : Maharashtra

Mumbai dated the 14th day of November, 2008

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (The Act for short) vide Government of India, Ministry of Labour, New Delhi Order No. L - 17012/22/2006-(IR) (M) dt.14-2-2007. The terms of reference given in the schedule are as follows:

"Whether the action of the management of Sr. Divisional Manager, LIC of India, Mumbai Division IV, Mumbai by not considering the name of Shri S. M. Jagtap for promotion in spite of unblemished

service and being senior most is justified? If not, what relief Shri S. M. Jagtap is entitled to?"

2. Shri C. S. Dalvi, authorised representative on behalf of the workman concerned along with his consent letter dt.8th August, 2007 for withdrawal of his case has been filed informing that he does not want to continue further with the proceedings and press to close the above matter pending before this Tribunal.

3. In view of above, there lies no dispute for its adjudication and no dispute award is passed accordingly.

JUSTICE C. P. MISHRA, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

का.आ 75.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैगानीज और (इंडिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सी जी आई टी/एन जी पी/68/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-2008 को प्राप्त हुआ था।

[सं. एल-27011/1/2005-आई आर (एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O. 75.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/NGP/68/05) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Manganese Ore (India) Ltd. and their workmen, which was received by the Central Government on 15-12-2008.

[No. L-27011/1/2005-IR (M)]

KAMAL BAKHNU, Desk Officer

ANNEXURE

BEFORE SHRI A. N. YADAV, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

CASE No. CGIT /NGP/68/05 Date: 25-11-2008

Petitioner/Party No. 1 :

The Secretary General,
Rashtriya Manganese Mazdoor Sangh,
Pahad Bungalow, Katol Road,
Nagpur-440013.
on behalf of Shri Ashok Gunmurty

Versus

Respondent/Party No. 2 :

The Chairman-cum-Managing Director,
M.O.I. Ltd, 3, Mount Road,
Extension, Nagpur (M.S.),
Nagpur-

AWARD

(Dated: 25th November, 2008)

1. The Central Government after satisfying the existence of dispute between the Secretary General, Rashtriya Manganese Mazdoor Sangh, Pahad Bunglow, Katol Road, Nagpur on behalf of Shri Ashok Gunmurty (Party No.1) and the Chairman-cum-Managing Director, M.O.I.Ltd, 3, Mount Road, Extension, Nagpur (M.S.), Nagpur (Party No.2) referred the same for adjudication to this Tribunal vide its letter No.L-27011/1/2005-IR (M) dated 17-8-2005 under clause (d) of sub-Section (1) and sub-Section (2A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) with the following schedule.

2. "Whether the action of management of Manganese Ore (India) Ltd., Nagpur in terminating the services of Shri Ashok Gunmurty, U.G. Piece rated worker of Balaghat Mine w.e.f. 27-12-2002 is justified? if not what relief the workman is entitled to?"

3. The reference came up for hearing on 24-11-2008 on which the petitioner and his Counsel were absent. The counsel for Respondent was present. The Petitioner is not attending the case since beginning of the case i.e. 26-10-2006. He has not even filed a statement of claim. I do not think it proper to continue it on the same stage years together. It seems that the Petitioner is not interested in prosecuting the case. In the circumstances, no purpose will be served in continuing the case, hence it dismissed for the default of the Petitioner and pass the negative award that he is not entitled for any relief.

A. N. YADAV, Presiding Officer

Date: 25-11-2008

नई दिल्ली, 17 दिसम्बर, 2008

का.आ 76.——औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयरपोर्ट औद्योगिक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/अम न्यायालय सं.-1, चम्भीगढ़ के पंचाट (संदर्भ संख्या आई डी-1/96 और 3/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-2008 को प्राप्त हुआ था।

[(i) सं. एल-11012/02/1995-आई आर (एम)]

[(ii) सं. एल-11012/05/1995-आई आर (एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 17th December , 2008

S.O. 76.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. I. D. No. 1/96 & 3/96) of the Central Government Industrial Tribunal-cum-Labour Court, No-1, Chandigarh now as shown in the

Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India and their workmen, which was received by the Central Government on 15-12-2008.

[(i) No. L-11012/02/1995-IR (M)]

[(ii) No. L-11012/05/1995-IR (M)]

KAMAL BAKHNU, Desk Officer

ANNEXURE

BEFORE SHRIGYANENDRA KUMAR SHARMA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1
CHANDIGARH.

CASE NO. I. D. NO. 1/96 & 3/96

(1) Shri Kashmire Lal, S/o Late Shri Mehna Ram, Village-Beheri, Post-Bandi, Distt. Kangra.

(2) Shri Rakesh Kumar, S/o Shri Dharamchand, V.P.O. Bhadiar, Distt. Kangra

Applicant

Versus

The Aerodrome Officer, Airport Authority of India, Kangra Airport Gagal- 176209.

Respondent

APPEARANCES

For the Workman : Sri Rana Inderjit Singh

For the Management : Sri Sameer Pahwa

AWARD

Passed on : 12-11-08

Government of India referred two industrial disputes namely ID 1/96 Shri Kashmire Lal Vs. Air Port Authority of India Ref. No. L-11012/02/95(IR)(Misc.) dated 4-1-96 and ID No. 3/96 Shri Rakesh Kumar Vs. Air Port Authority of India Ref. No. L-11012/05/95(IR)(Misc.), dated: 4-1-96 for judicial adjudication. The common question of law and facts is involved in both of the references, accordingly, the references are being disposed of by common award.

ID No. 1/96 Shri Kashmire Lal Vs. Air port Authority of India shall be the leading file, whereas, copy of this award shall be placed in ID No. 3/96 Shri Rakesh Kumar Vs. Air Port Authority of India.

The main question for determination in both of the references is whether the management of Air Port Authority of India, Gagal, Aerodrome Kangra, Himachal Pradesh has rightly terminated the services of both of the workman w.e.f. 3-6-93.

The case of both of the workman in nut shell is that Shri Kashmire Lal joined the department as daily waged worker on 4-10-1992 and continuously worked with the department upto 3-6-93, when his services were terminated

without notice or assigning any reason. The workman Shri Rakesh Kumar has similar case that he joined the department as daily waged worker on 12-10-92 and continuously worked with the department upto 3-6-93, when his services were terminated without any notice or assigning any reason. They have completed 240 days of work in the preceding year from the date of their termination. No notice or retrenchment compensation was given to them. Both of the workmen have claimed for their reinstatement into the services on the ground of illegal termination without compliance of the provisions of Industrial Disputes Act.

Management of Air Port Authority of India Ltd. opposed the contention of the workmen by filing written statement. The management denied that the workman have completed 240 days of work in the preceding year from the date of their termination. The management has given a calculation of working days and stated that Shri Rakesh Kumar has worked only for 216 days from October, 1992 to June, 1993, whereas, workman Kashmiri Lal has worked only for 222 days from October, 1992 to June, 1993. It is also stated that any of them has not completed 240 days of work with the department in the preceding year from the date of their termination, hence, their re-engagement cannot be termed as retrenchment and they are not, accordingly, entitled for any relief.

All the parties were afforded opportunity for adducing evidence. The workmen filed their respective affidavits in support of their contention and they were subjected to cross-examination by learned counsel for the management. On behalf of the management, Shri S. H. Sharma, Aerodrome Officer, filed the affidavit and he was also cross-examined by learned counsel for the workmen.

Certain documents were also filed by the management in compliance of the order passed by this Tribunal. Calculation of working days, copies of vouchers by which the payment was effected were filed. Photocopies of attendance register were filed by the workmen, in both of the files. The management could not produce the original attendance register on the ground that the original attendance register was not available with the department.

I have heard learned counsel for the parties and pursued the entire materials on record. The management has only filed the vouchers of payment and calculation of working days but has utterly failed to file the attendance register, the photocopies of which have been filed by the workmen. It is not the case of the management that attendance register has been destroyed or otherwise lost. The relevancy and importance of attendance register and the vouchers is same but there is a difference in working days, if counted on the basis of the attendance register and vouchers. As per vouchers supplied by the management Shri Rakesh Kumar is said to work with the management for 216 days only, whereas, Shri Kashmiri Lal has alleged to worked with the management for 222 days.

In the calculation Sundays and Saturdays have not been counted by the management. In the photocopies of the attendance register, both of the workmen have said to be worked for entire month after their joining. The attendance marked as (P) by the officer of management clearly seems in the photocopies of the attendance register. For the month of January, 1993, one attendance of workman was cancelled and one day wages were recovered. It is the case of the management that attendance was cancelled because on that particular day workman had not worked and the wages were paid. Therefore, on audit objection, one day wage were recovered from the workmen after canceling his attendance. This contention of the management is based on the photocopies of attendance register filed by the workman. It shows that the attendance was marked by the officer of the management and the management has utterly failed to provide the original attendance register without giving any satisfactory answer as to the availability of the same with the management. Accordingly, adverse inference shall be drawn for non producing the original attendance register, and photocopies of the attendance register, filed by the workman shall be relied upon. On perusal of the attendance register it is clear that both of the workman have completed 240 days in the preceding year from the date of their termination. Workman Rakesh Kumar has worked as per the attendance register for 244 days, whereas, Shri Kashmiri Lal had worked 242 days.

It is not the case of the management that the workmen were provided the work as and when required. The work was continuously available with the management because from the next day from their termination, the work was taken through a contractor on outsources basis. Thus, it is clear that workman were terminated by the management to escape from any legal liability regarding their continuation in services.

It is not the case of the management as well that the initial appointment of the workmen were illegal.

Thus, the workmen were appointed legally as the daily waged workers and they continuously worked for 240 days in the preceding year from the date of their termination. Accordingly, they are entitled for the protection of the provisions of Industrial Disputes Act for their termination. They should not have been terminated by the management without the compliance of the provisions of Industrial Disputes Act. Meaning thereby, without one month notice and retrenchment compensation the workman should not have been termination from the services, and the termination of the workmen was illegal being against the provisions of the Act.

The next question for determination before this Tribunal is what relief should be given to the workmen? In case, the termination of each workman is held illegal, there are two possible remedies available. One remedy is the reinstatement of the workmen into the services and another

is the reasonable compensation. In normal circumstances, the Court should prefer the reinstatement of workman into the services, but in few exceptional circumstances, the Court may also opted for providing the reasonable compensation to the workman. In this case, it has come to my notice that presently all the work of daily waged worker is carried out through the contractor on outsources basis as per policy of the Central Government. Accordingly, under such circumstances, in my opinion, reasonable compensation is the only suitable remedy. The calculation of reasonable compensation should depends on reasonable criteria. The criteria which I am adopting in these references is the amount of one month salary in lieu of notice, amount of retrenchment compensation on the date termination of their services, depreciation of amount from the date of the termination till the passing of the award (interest) and the legal expenses incurred by the workmen in the legal battle. On considering all the facts mentioned above, I am of the view that Rs. 25,000 each is the reasonable compensation to be awarded to every workman. Accordingly management of respondent is directed to make the payment of Rs. 25,000 to every workman within a month from the date of publication of this award. Both of the references are, accordingly, answered, Central Government be informed. File be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

का.आ 77.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई ओ सी एल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्यायालय सं.-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1111/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-2008 को प्राप्त हुआ था।

[सं. एल-42011/5/1991-आई आर (एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O. 77.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1111/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No-II Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of IOCL and their workmen, which was received by the Central Government on 15-12-2008.

[No. L-42011/5/1991-IR (M)]

KAMAL BAKHRI, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Presiding Officer: Shri Kuldip Singh

Case I. D. No: 1111/2k5

Registered on: 22-9-2005

Date of Decision: 17-11-2008

Shri Kashmira Singh Son of Shri Kendra Singh
H No. 23, Durga Colony Hissar -125001

....Petitioner

Versus

The General Manager, Indian Oil Corporation Limited,
Norther Region, world Trade Centre, Babar Road,
New Delhi -110001.

....Respondent

For the Workman : Shri Amit Sharma, Advocate.

For the Management : S/Sh. Jagat Arora/J. Buther
Advocates.

AWARD

The present reference has been received from the Ministry of Labour, Government of India for adjudication vide their order No. L-42011/5/91-IR (Misc) Dated 29-6-1992. The reference was originally sent to CGIT, Chandigarh and on the creation of this Tribunal it was received on 22-9-2005. It reads as under:—

"Whether the action of the Management of Indian Oil Corporation Ltd. in termination of services of Shri Kashmira Singh S/o Sh. Kendra Singh w.e.f. the Month of May, 1987 is just, fair and legal? If not, what relief the workman concerned is entitled to and from what date?"

In response to notice of reference given to the parties, they appeared through their counsel and filed their respective claims. The workman filed the statement of claim and after the filing of the written statement by the Management, he filed the replication and supported his pleadings with his affidavit. The Management supported their written statement with the affidavit of Shri Ramesh Kumar Kapai, their witness. The parties have also placed some documents on record to which the reference shall be made at the appropriate stage.

In short the claim of the workman is that he had joined service with the Management as Tank Truck Driver from the year 1978 and remained serving them continuously till May, 1987. That the Management terminated the services of the workman illegally and without following the provisions of law. The intermittent breaks in the services of the workman were not due to the fault of the

workman. That the workman was neither paid the retrenchment compensation nor he was given notice or wages for the notice period before the termination of his services. They further violated the provisions of law as contained in the Industrial Dispute Act 1947, in short "Act" as they retained the juniors of the workman while terminated his services. They have also not given the reasons for the cession of job of the workman. The workman prays that the order of termination of his services be declared illegal and he be reinstated on the post he was working. It may also be ordered to pay him the back wages and other service benefits.

The Management has opposed the claim of the workman by raising preliminary objections as well as contesting the claim of the workman on merits. Their plea is that the reference is misplaced as the Management has not terminated the services of the workman in May 1987. According to them the workman was engaged for some period during 1985—1987 and he served them for 102 days in three years. The workman in fact was also working for other companies during 1985-1987, therefore, he cannot make a claim against the Management. Even otherwise, the claim made is belated, stale and therefore, deserve rejection. The next claim of the Management is that they are a statutory Corporation having proper recruitment procedure. As per their rules the Tank Drivers are selected from among the employees of the Corporation working as Khalasis etc., from Grade I to III provided they fulfill the qualifications and norms. The workman was never appointed as a regular employee. Even otherwise, he did not work for 240 days for the Management. Therefore, he has no right to raise the claim against the Management. On merits it is submitted by them that the workman was engaged on daily wages on casual basis for some days and he did not enter into the employment of the Management in the year 1987 as is claimed. According to them the workman had served the Management for 102 days i.e. 43 days in 1982, 41 days in 1983, 6 days in 1984, one day in 1985 and 11 days in 1987 and had not worked for the Management in the year 1986 even for a day. They denied that the workman was ever in continuous service of the Management. Therefore, he is not entitled to the protection under Section 25-F of the Act. Denying that any junior of the workman was retained by the Management while terminating the services of the workman, it is stated by them that the provision of Section 25-H of the Act also do not help him as he does not fulfill the conditions contained in Section 25-B of the Act. They have also contested that the provisions of Section 25-H of the Act are applicable in the case. In the end the Management has submitted that the workman is not entitled to any relief. Therefore, the reference may be answered against him for the reasons that the claim raised is belated, that the workman was never in the regular employment of the Management. He had never completed 240 day's service

in any calendar year and he remained in the employment of other companies. He also did not fulfill the eligibility criteria for being engaged as Tank Truck Driver.

In the replication the workman reiterated the facts stated in the statement of claim and submitted that the reference is maintainable. He has denied that he was ever in the employment of other companies. He has also contested the claim of latches made by the Management and stated that the reference cannot be rejected on that grounds. He has claimed that he had been assigned the duties of vehicle No. HRF-3677 and 3678 besides HRT-3756, 496, HRF-3396, 1256, 3752 and 8451 from the year 1985 to 1986. In support of his claim he has stated that the duties performed by him are well contained in the Log Book of the respective vehicles. He has again claimed that the objection raised by the Management are baseless, illegal and the same may be rejected.

The perusal of the file show that the Management has not denied that the workman had served with them from the year 1985 to 1987 but their claim is that the workman, in three years, had served only for 102 days. According to them the workman had not served the Management even for a day during the year 1986. The workman has not brought on record any evidence to show that he had served the Management continuously during the years 1985 to 1987.

It may be noted here that the counsel for the parties agreed that the evidence produced in connected references No. 58, 70 and 71 of 1992 be read in this reference also. Out of these references 71 of 1992 is on the file of CGIT-I, Chandigarh whereas other two references i.e. 58 and 70 of 1992 are on the file of this Tribunal, registered as 1111 and 1112 of 2005. Therefore, it is required that the evidence produced in these two references be also considered in this case. On the file of I.D. No. 1111 and 1112, referred to above, the workman has placed Cash Memos exhibit M-1 to M-12 and on the file registered as 1112 there are also Cash Memos marked as A, B, C, D, E, F, G, H, and I. These bills show supply of a particular number of liters of HSD and MSP sent by the Indian Oil Corporation to different vendors of the oil in different places in Haryana. The claim of the workman is that these document contain the name of the workman, which shows that the workman had carried the oil on behalf of the Management to different vendors which speaks of the engagement of the workman by the Management during the period in question. As stated earlier, the workman has failed to prove his engagement by the Management by any order or by any other evidence suggesting that the workman was the employee of the Management, and that he had served the Management for 240 days in 12 calendar months preceding the date of his disengagement. In these bills there is no mention who had received the delivery from the Management and who had acknowledged the receipt of the oil on behalf of vendor. These Cash Memos do not show that the person who

carried the oil delivery from the Management was an employee of the Management. In case the workman has conveyed or received the oil, he could have received it on behalf of the vendor for whom the said delivery was meant, unless shown otherwise. Therefore, these Cash Memos do not support the claim made by the workman. The workman has placed much reliance on the failure of Conciliation Report made by the Assistant Labour Commissioner, Rohtak. After going through the report I feel that the facts stated in the report are only an opinion of the concerned A.L.C. and cannot be treated to be a piece of evidence unless the Management could have got a chance to cross-examine the author of the report about the opinion made in Failure of Conciliation Report. On record I do not find any positive evidence to show that the Management had engaged the workman as Tank Truck Driver and that the workman had served the Management for 240 days till May 1987, when his services are claimed to be terminated by the Management. There is another reason to have this view since as Kashmira Singh one of the workmen has admitted that he must have driven the vehicles of M/s. Bhagwant Rai, Darshan Kumar and Garib Singh Ripudaman Singh. He has further admitted that he was not made the member of Indian Oil Corporation Employees Union since he was a casual workman. This shows that the workman had not exclusively worked for the Management continuously for 240 days in twelve calendar months preceding the date of termination of his services.

After going through the whole and the evidence produced by the parties, I am of the opinion that the workman has failed to show that he was engaged by the Management during the period 1978 to 1987, and that he had served the management for more than 240 days in 12 calendar months preceding the date of termination of his services. He was, therefore, not a workman so as to claim protection under Section 25-F of the Act. He is, therefore, not entitled to any relief. The reference is answered against him in these terms and the award is passed. Let a copy of the award be sent to the appropriate Government for necessary action and the file be consigned to record after due compilation.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

का.आ 78.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार आई ओ सी एल के प्रबंधित्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं-II, चंडीगढ़ के पंचाट (सदर्भ संख्या 1112/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-2008 को प्राप्त हुआ था।

[सं. एल-42011/4/1991-आई आर (एम)]

कमल बाखरु, डेस्क अधिकारी

New Delhi, the 17th December, 2008

S.O.78.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1112/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No.-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of I O C L and their workmen, which was received by the Central Government on 15-12-2008.

[No. L-42011/4/1991-IR (M)]

KAMAL BAKHRI, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL —CUM-LABOUR COURT-II, CHANDIGARH

Presiding Officer: Shri Kuldip Singh

Case I. D. No: 1112/2k5

Registered on: 22-9-2005

Date of Decision: 20-11-2008

Shri Ram Bhagat

Son of Shri Kadernath

V & PO Saatrood, Tehsil and

District Hissar-125001

Petitioner

Versus

The General Manager, Indian Oil Corporation Limited, Northern Region, World Trade Centre, Babar Road, New Delhi-110001,

—Respondent

For the Workman : Shri Amit Sharma, Advocate.

For the Management : S/Sh. Jagat Arora/J. Buther
Advocates.

AWARD

The present reference has been received from the Ministry of Labour, Government of India for adjudication vide their order No. L - 42011/4/91- IR (Misc) Dated 16-6-1992. The reference was originally sent to CGIT, Chandigarh and on the creation of this Tribunal it was received on 22-9-2005. It reads as under:—

"Whether the action of the Management of Indian Oil Corporation Ltd., in termination of services of Shri Ram Bhagat S/o Sh. Kadernath in the Month of May, 1987 is just, fair and legal? If not, what relief the workman concerned is entitled to and from what date?"

In response to the notice of reference given to the parties, they appeared through their counsel and filed their respective claims. The workman filed the statement of claim and after the filing of the written statement by the Management, he filed the replication and supported his

pleadings with his affidavit. The Management supported their written statement with the affidavit of Shri Ramesh Kumar Kapai, their witness. The parties have also placed some documents on record to which the reference shall be made at the appropriate stage.

In short the claim of the workman is that he had joined service with the Management as Tank Truck Driver from the year 1978 and remained serving them continuously till May 1987. That the Management terminated the services, of the workman illegally and without following the provisions of law. The intermittent breaks in the service of the workman were not due to the fault of the workman. That the workman was neither paid the retrenchment compensation nor he was given notice or wages for the notice period before the termination of his services. They further violated the provisions of law as contained in the Industrial Disputes Act 1947, in short "Act" as they retained the juniors of the workman while terminated his services. They have also not given the reasons for the cession of job of the workman. The workman prays that the order of termination of his services be declared illegal and he be reinstated on the post he was working. It may also be ordered to pay him the back wages and other service benefits.

The Management has opposed the claim of the workman by raising preliminary objections as well as contesting the claim of the workman on merits. Their plea is that the reference is misplaced as the Management has not terminated the services of the workman in May 1987. According to them the workman was engaged for some period during 1985-1987 and he served them for 209 days in three years. The workman in fact was also working for other companies during 1985-1987, therefore, he cannot make a claim against the Management. Even otherwise, the claim made is belated, stale and therefore, deserve rejection. The next claim of the Management is that they are a statutory Corporation having proper recruitment procedure. As per their rules the Tank Truck Drivers are selected from among the employees of the Corporation working as Khalasis etc., from Grade I to III provided they fulfil the qualifications and norms. The workman was never appointed as a regular employee. Even otherwise, he did not work for 240 days for the Management. Therefore, he has no right to raise the claim against the Management. On merits it is submitted by them that the workman was engaged on daily wages on casual basis for some days and he did not enter into the employment of the Management in the year 1987 as is claimed. According to them the workman had served the Management for 209 days, 16 days in 1981, 55 days in 1982, 135 days in 1983 and 3 days in 1984. They denied that the workman was ever in continuous service of the Management. Therefore, he is not entitled to the protection under Section 25-F of the Act. Denying that any junior of the workman was retained by the Management while terminating the services

of the workman, it is stated by them that the provision of Section 25-H of the Act also do not help him as he does not fulfil the conditions contained in Section 25-B of the Act. They have also contested that the provisions of Section 25-H of the Act are applicable in the case. In the end the Management has submitted that the workman is not entitled to any relief. Therefore, the reference may be answered against him for the reasons that the claim raised is belated, that the workman was never in the regular employment of the Management. He had never completed 240 days' service in any calendar year and he remained in the employment of other companies. He also did not fulfill the eligibility criteria for being engaged as a Tank Truck Driver.

In the replication the workman reiterated the facts stated in the statement of claim and submitted that the reference is maintainable. He has denied that he was ever in the employment of other companies. He has also contested the claim of latched made by the Management and stated that the reference cannot be rejected on that grounds. He has claimed that he had been assigned the duties of vehicle No. HRF-3677 and 3678 besides HRT-3756, 496, HRF-3396, 1256, 3752 and 8451 from the year 1985 to 1986. In support of his claim he has stated that the duties performed by him are well contained in the Log Book of the respective vehicles. He has again claimed that the objections raised by the Management are baseless, illegal and the same may be rejected.

The perusal of the file show that the Management has not denied that the workman had served with them from the years 1985 to 1987 but their claim is that the workman, in three years, had served only for 209 days. According to them the workman had not served the Management even for a day during the year 1986. The workman has not brought on record any evidence to show that he had served the Management continuously during the years 1985 to 1987.

It may be noted here that the counsel for the parties agreed that the evidence produced in connected reference Nos. 58, 70 and 71 of 1992 be read in this reference also. Out of these references 71 of 1992 is on the file of CGIT-I, Chandigarh whereas other two references i.e. 58 and 70 of 1992 are on the file of this Tribunal, registered as 1111 and 1112 of 2005. Therefore, it is required that the evidence produced in these two references be also considered in this case. On the file of I.D. No. 1111 and 1112, referred to above, the workman has placed Cash Memos exhibit M-1 to M-12 and on the file registered as 1112 there are also Cash Memos marked as A, B, C, D, E, F, G, H and I. These bills show supply of a particular number of litres of HSD and MSP sent by the Indian Oil Corporation to different vendors of the oil in different places in Haryana. The claim of the workman is that these documents contain the name of the workman, which shows that the workman had carried the oil on behalf of the Management to different vendors

which speaks of the engagement of the workman by the Management during the period in question. As stated earlier, the workman has failed to prove his engagement by the Management by any order or by any other evidence suggesting that the workman was the employee of the Management, and that he had served the Management for 240 days in 12 calendar months preceding the date of his disengagement. In these bills there is no mention who had received the delivery from the Management and who had acknowledged the receipt of the oil on behalf of vendor. These Cash Memos do not show that the person who carried the oil delivery from the Management was an employee of the Management. In case the workman has conveyed or received the oil, he could have received it on behalf of the vendor for whom the said delivery was meant, unless shown otherwise. Therefore, these Cash Memos do not support the claim made by the workman. The workman has placed much reliance on the failure of Conciliation Report made by the Assistant Labour Commissioner, Rohtak. After going through the report I feel that the facts stated in the report are only an opinion of the concerned A.L.C. and cannot be treated to be a piece of evidence unless the Management could have got a chance to cross-examine the author of the report about the opinion made in Failure of Conciliation Report. On record I do not find any positive evidence to show that the Management had engaged the workman as Tank Truck Driver and that the workman had served the Management for 240 days till May 1987, when his services are claimed to be terminated by the Management. There is another reason to have this view since as Kashmira Singh one of the workmen has admitted that he must have driven the vehicles of M/s. Bhagwant Rai, Darshan Kumar and Garib Singh, Ripudaman Singh. He has further admitted that he was not made the member of Indian Oil Corporation Employees Union since he was a casual workman. This shows that the workman had not exclusively worked for the Management continuously for 240 days in twelve calendar months preceding the date of termination of his services.

After going through the whole and the evidence produced by the parties, I am of the opinion that the workman has failed to show that he was engaged by the Management during the period 1978 to 1987, and that he had served the management for more than 240 days in 12 calendar months preceding the date of termination of his services. He was, therefore, not a workman so as to claim protection under Section 25-F of the Act. He is, therefore, not entitled to any relief. The reference is answered against him in these terms and the award is passed. Let a copy of the award be sent to the appropriate Government for necessary action and the file be consigned to record after due compilation.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 17 दिसम्बर, 2008

का.आ 79.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई ओ सी एल के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/प्रम न्यायालय सं.-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1110/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-12-2008 को प्राप्त हुआ था।

[सं. एल-42011/6/1991-आई आर (एम)]

कमल बाखरू, डेस्क अधिकारी

New Delhi, the 17th December , 2008

S.O. 79.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1110/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of IOCL and their workman, which was received by the Central Government on 15-12-2008.

[No. L-42011/6/1991-IR (M)]

KAMAL BAKHRU, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Presiding Officer : Shri Kuldip Singh

Case I. D. No: 1110/2005

Registered on: 22-12-1992

Date of Decision: 17-11-2008

Shri Bhagwan Dass

Son of Shri Rattan Singh

V & PO Mokhra , District Rohtak

—Petitioner

Versus

The General Manager, Indian Oil Corporation Limited, Northern Region, world Trade Centre, Babar Road, New Delhi- 110001.

—Respondent

For the Workman : Shri Amit Sharma, Advocate.

For the Management : S/Sh. Jagat Arora/J. Buther, Advocates.

AWARD

The present reference has been received from the Ministry of Labour, Government of India for adjudication vide their order No. L-42011/6/91- IR (Misc.) Dated

11-12-1992. The reference was originally sent to CGIT, Chandigarh and on the creation of this Tribunal it was received on 22-9-2005. It reads as under:—

“Whether the action of the Management of Indian Oil Corporation Ltd. in termination of services of Shri Suraj Bhan Bhagwan Dass S/o Sh. Rattan Singh w.e.f. March 1987 is just, fair and legal? If not, what relief the workman concerned is entitled to and from what date?”

In response to notice of reference given to the parties, they appeared through their counsel and filed their respective claims. The workman filed the statement of claim and after the filing of the written statement by the Management, he filed the replication and supported his pleadings with his affidavit. The Management supported their written statement with the affidavit of Shri Ramesh Kumar Kapai, their witness. The parties have also placed some documents on record to which the reference shall be made at the appropriate stage.

In short the claim of the workman is that he had joined service with the Management as Tank Truck Driver from the year 1978 and remained serving them continuously till May 1987. That the Management terminated the services of the workman illegally and without following the provisions of law. The intermittent breaks in the services of the workman were not due to the fault of the workman. That the workman was neither paid the retrenchment compensation nor he was given notice or wages for the notice period before the termination of his services. They further violated the provisions of law as contained in the Industrial Disputes Act, 1947, in short “Act” as they retained the juniors of the workman while terminated his services. They have also not given the reasons for the cession of job of the workman. The workman prays that the order of termination of his services be declared illegal and he be reinstated on the post he was working. It may also be ordered to pay him the back wages and other service benefits.

The Management has opposed the claim of the workman by raising preliminary objections as well as contesting the claim of the workman on merits. Their plea is that the reference is misplaced as the Management has not terminated the services of the workman in May 1987. According to them the workman was engaged for some period during 1985-1987 and he served them for 42 days in three years. The workman in fact was also working for other companies during 1985-1987, therefore, he cannot make a claim against the Management. Even otherwise, the claim made is belated, stale and therefore, deserve rejection. The next claim of the Management is that they are a statutory Corporation having proper recruitment procedure. As per their rules the Tank Drivers are selected from among the employees of the Corporation working as Khalasis etc., from Grade I to III provided they fulfil the

qualifications and norms. The workman was never appointed as a regular employee. Even otherwise, he did not work for 240 days for the Management. Therefore, he has no right to raise the claim against the Management. On merits it is submitted by them that the workman was engaged on daily wages on casual basis for some days and he did not enter into the employment of the Management in the year 1987 as is claimed. According to them the workman had served the Management for 32 days in 1985, 10 days in 1987 and had not worked for the Management in the year 1986 even for a day. They denied that the workman was ever in continuous service of the Management. Therefore, he is not entitled to the protection under Section 25-F of the Act. Denying that any junior of the workman was retained by the Management while terminating the services of the workman, it is stated by them that the provision of Section 25-H of the Act also do not help him as he does not fulfill the conditions contained in Section 25-B of the Act. They have also contested that the provisions of Section 25-H of the Act are applicable in the case. In the end the Management has submitted that the workman is not entitled to any relief. Therefore, the reference may be answered against him for the reasons that the claim raised is belated, that the workman was never in the regular employment of the Management. He had never completed 240 days' service in any calendar year and he remained in the employment of other companies. He also did not fulfil the eligibility criteria for being engaged as a Tank Truck Driver.

In the replication the workman reiterated the facts stated in the statement of claim and submitted that the reference is maintainable. He has denied that he was ever in the employment of other companies. He has also contested the claim of latched made by the Management and stated that the reference cannot be rejected on that ground. He has claimed that he had been assigned the duties of vehicle No. HRF-3677 and 3678 besides HRT-3756, 496, HRF-3396, 1256, 3752 and 8451 from the year 1985 to 1986. In support of his claim he has stated that the duties performed by him are well contained in the Log Book of the respective vehicles. He has again claimed that the objection raised by the Management are baseless, illegal and the same may be rejected.

The perusal of the file show that the Management has not denied that the workman had served with them from the year 1985 to 1987 but their claim is that the workman, in three years, had served only for 32 days. According to them the workman had not served the Management even for a day during the year 1986. The workman has not brought on record any evidence to show that he had served the Management continuously during the years 1985 to 1987.

It may be noted here that the counsel for the parties agreed that the evidence produced in connected references

Nos. 58, 70 and 71 of 1992 be read in this reference also. Out of these references 71 of 1992 is on the file of CGIT-I, Chandigarh whereas other two references i.e., 58 and 70 of 1992 are on the file of this Tribunal, registered as 1111 and 1112 of 2005. Therefore, it is required that the evidence produced in these two references be also considered in this case. On the file of I.D. No. 1111 and 1112, referred to above, the workman has placed Cash Memos exhibit M-1 to M-12 and on the file registered as 1112 there are also Cash Memos marked as A, B, C, D, E, F, G, H, and I. These bills show supply of a particular number of litres of HSD and MSP sent by the Indian Oil Corporation to different vendors of the oil in different places in Haryana. The claim of the workman is that these documents contain the name of the workman, which shows that the workman had carried the oil on behalf of the Management to different vendors which speaks of the engagement of the workman by the Management during the period in question. As stated earlier, the workman has failed to prove his engagement by the Management by any order or by any other evidence suggesting that the workman was the employee of the Management, and that he had served the Management for 240 days in 12 calendar months preceding the date of his disengagement. In these bills there is no mention who had received the delivery from the Management and who had acknowledged the receipt of the oil on behalf of vendor. These Cash Memos do not show that the person who carried the oil delivery from the Management was an employee of the Management. In case the workman has conveyed or received the oil, he could have received it on behalf of the vendor for whom the said delivery was meant, unless shown otherwise. Therefore, these Cash Memos do not support the claim made by the workman. The workman has placed much reliance on the failure of Conciliation Report made by the Assistant Labour Commissioner, Rohtak. After going through the report I feel that the facts stated in the report are only an opinion of the concerned A.L.C. and cannot be treated to be a piece of evidence unless the Management could have got a chance to cross-examine the author of the report about the opinion made in Failure of Conciliation Report. On record I do not find any positive evidence to show that the Management had engaged the workman as Tank Truck Driver and that the workman had served the Management for 240 days till May, 1987, when his services are claimed to be terminated by the Management. There is another reason to have this view since as Kashmira Singh one of the workmen has admitted that he must have driven the vehicles of M/s. Bhagwant Rai Darshan Kumar and Garib Singh Ripudaman Singh. He has further admitted that he was not made the member of Indian Oil Corporation Employees Union since he was a casual workman. This shows that the workman had not exclusively worked for the Management continuously for 240 days in twelve calendar months preceding the date of termination of his services.

After going through the whole and the evidence produced by the parties, I am of the opinion that the workman has failed to show that he was engaged by the Management during the period 1978 to 1987, and that he had served the management for more than 240 days in 12 calendar months preceding the date of termination of his services. He was, therefore, not a workman so as to claim protection under Section 25-F of the Act. He is, therefore, not entitled to any relief. The reference is answered against him in these terms and the award is passed. Let a copy of the award be sent to the appropriate Government for necessary action and the file be consigned to record after due compilation.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 18 दिसम्बर, 2008

का.आ 80.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में कोच्चि रिफाइनरिंग लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ संख्या 171/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-12-2008 को प्राप्त हुआ था।

[सं. एल-30012/19/2007-आई आर (सी-1)]

स्नेह लता जवास्, डेस्क अधिकारी

New Delhi, the 18th December, 2008

S.O. 80.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 171/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation of the management of M/s. Kochi Refineries Ltd. and their workmen, which was received by the Central Government on 18-12-2008.

[No. L-30012/19/2007-IR(C-1)]

SNEH LATA JAWAS , Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri P.L. Norbert, B.A., LL.B., Presiding Officer

(Friday the 28th day of November, 2008/7th Agrahayana 1930)

I. D. 171/2006

(I. D. 20/1998 of Labour Court, Ernakulam)

Union :

1. The General Secretary,
Kochi Refineries Workers Association,
Ambalamughal, Ernakulam District.

2. The General Secretary,
Kochi Refineries Employees Association,
Ambalamughal, Ernakulam District

By Adv. Sri. C. S. Ajith Prakash.

Management:

1. The General Manager (HRM),
Kochi Refineries Ltd.,
Ambalamughal, Ernakulam District.

By Adv. M/s. Menon & Pai

This case coming up in Adalath on 28-11-2008, this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

This is a reference made under Section 10 (1) (d) of Industrial Disputes Act.

2. The dispute was taken up in adalath and discussed between the parties. They came to an amicable settlement that 20% out of the wages of employees deducted by the management will be refunded to the employees. A separate agreement was signed by both parties in full and final settlement of the dispute.

In the result an award is passed in terms of the agreement and agreement will form part of the award.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her and corrected and passed by me on this the 28th day of November, 2008.

P. L. NORBERT, Presiding Officer

Appendix - Nil.

IN THE CGIT-CUM-LABOUR COURT, ERNAKULAM

I. D. No. 171/2006

The claim has been discussed and settled to the effect that 20% of the quantum of wages deducted will be refunded to the workers within two months as final and full settlement of the claim.

Dated this the 28th day of November, 2008.

Union : Management Sd/-

Counsel for workman: Counsel for Management:
Sd/-

Mediator

नई दिल्ली, 23 दिसम्बर, 2008

का. आ. 81:- राष्ट्रपति श्री दिलीप कुमार देब रोय को दिनांक 10-12-2008 (पूर्वाह्न) से उनके 65 वर्ष की आयु का होने अथवा अगले आदेशों तक, जो भी पहले हो, केंद्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, गुवाहाटी के पीठासीन अधिकारी के रूप में नियुक्त करते हैं।

[सं. ए-11016/01/2008-सीएलएस-II]

पी. के. ताम्रकार, अवर सचिव

New Delhi, the 23rd December, 2008

S. O. 81 :—The President is pleased to appoint Shri Dilip Kumar Deb Roy as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Guwahati w.e.f. 10-12-2008 (F.N.) for a period till he attains 65 years of age or until further orders, whichever is earlier.

[No. A-11016/01/2008-CLS-II]

P. K. TAMRAKAR, Under Secy.